DOCUMENTS RELATING TO THE PROGRAM OF THE FIRST HAGUE PEACE CONFERENCE

Laid before the Conference by the Netherland Government

CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE
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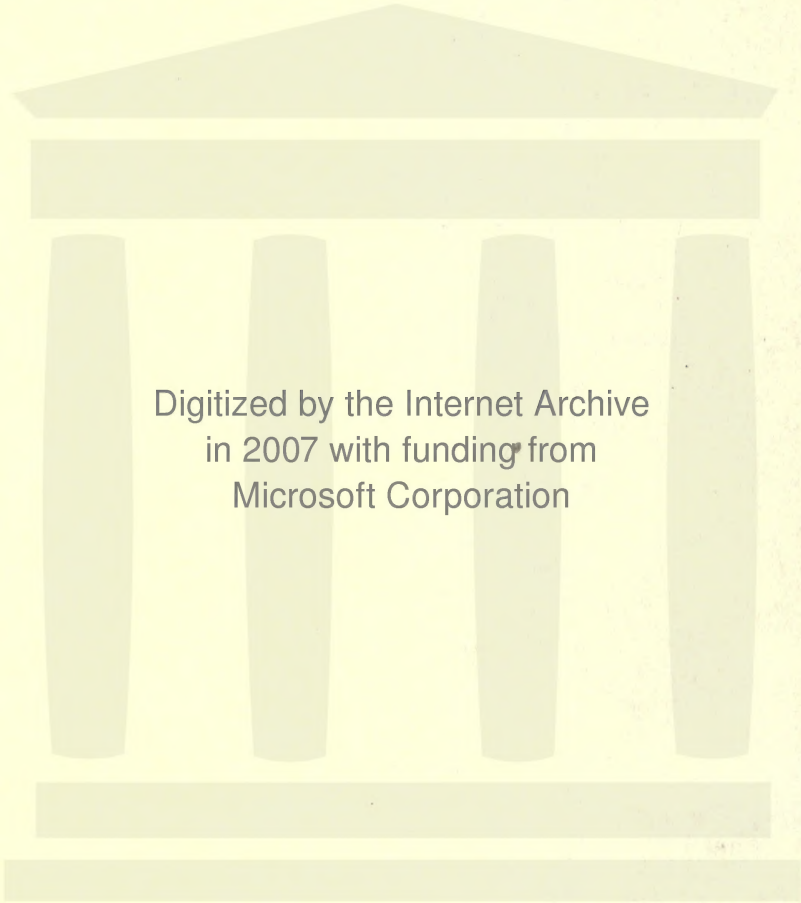

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Documents Relating to the Program of the First Hague Peace Conference

LAID BEFORE THE CONFERENCE BY
THE NETHERLAND GOVERNMENT;

TRANSLATION

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PREFACE

THE Netherland Government in 1899, at the time of the assembling of the First Peace Conference at The Hague, prepared and laid before that conference a collection of official documents and extracts from writers of authority relating to the various questions which had been proposed for discussion by the Russian Government. This collection, as published, is entitled *Actes et documents relatifs au programme de la conférence de la paix publiés d'ordre du gouvernement par Jhr. van Daehne van Varick* (The Hague, Martinus Nijhoff, 1899).

An English translation of the volume is contained in the present pamphlet issued by the Division of International Law of the Carnegie Endowment for International Peace, in pursuance of the policy of the Trustees to disseminate information of this nature and of the specific direction of the Executive Committee in regard to the above-mentioned documents. The first part of the volume relates to the subject of the limitation of armaments, and has heretofore been issued by the Division in English translation as No. 22 of this Pamphlet Series, the supply of which has been exhausted.

The footnotes of the original have been enlarged by adding biographical and bibliographical data.

It will be observed that the Rush-Bagot Agreement between Great Britain and the United States for the limitation of armament upon the Great Lakes of North America was not included among the documents submitted by the Netherland Government to the Hague Peace Conference. As the present publication consists solely of the documents laid before the Conference, it was not deemed advisable to insert it in the text. Inasmuch, however, as one of the documents included in the collection refers to the Agreement, it is, for the sake of completeness, added in the form of an appendix.

The reader interested in the Agreement will find it most conveniently perhaps in the second of the present series of pamphlets, entitled *Limitation of Armament on the Great Lakes*, being the report made under date of December 7, 1892, by the Honorable John W. Foster, Secretary of State, to the President of the United States.

JAMES BROWN SCOTT,

Director of the Division of International Law.

WASHINGTON, D.C.,
May 1, 1921.

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PART I

MESSAGE OF THE CZAR

THE maintenance of general peace and a possible reduction of the excessive armaments which weigh upon all nations present themselves, in the existing condition of the whole world, as the ideal towards which the endeavours of all Governments should be directed.

The humanitarian and magnanimous views of His Majesty the Emperor, my august master, are in perfect accord with this sentiment.

In the conviction that this lofty aim is in conformity with the most essential interests and the legitimate aspirations of all Powers, the Imperial Government believes that the present moment would be very favourable for seeking, by means of international discussion, the most effective means of ensuring to all peoples the benefits of a real and lasting peace, and above all of limiting the progressive development of existing armaments.

In the course of the last twenty years the longings for a general state of peace have become especially pronounced in the consciences of civilized nations.

The preservation of peace has been put forward as the object of international policy. In its name great States have formed powerful alliances ; and for the better guaranty of peace they have developed their military forces to proportions hitherto unknown, and still continue to increase them without hesitating at any sacrifice. All these efforts nevertheless have not yet led to the beneficent results of the desired pacification.

The ever-increasing financial charges strike and paralyze public prosperity at its source.

The intellectual and physical strength of the nations, their labour and capital, are for the most part diverted from their natural application and unproductively consumed.

Hundreds of millions are spent in acquiring terrible engines of destruction, which though to-day regarded as the last word of science are destined to-morrow to lose all value in consequence of some fresh discovery in the same field.

National culture, economic progress, and the production of wealth are either paralyzed or perverted in their development. Moreover, in proportion as the armaments of each Power increase, so do they less and less attain the object aimed at by the Governments.

Economic crises, due in great part to the system of amassing armaments to the point of exhaustion, and the continual danger which lurks in this accumulation of war material, are transforming the armed peace of our days into a crushing burden which the peoples have more and more difficulty in bearing. It appears evident, then, that if this state of affairs be prolonged, it will inevitably lead to the very cataclysm which it is desired to avert, and the impending horrors of which are fearful to every human thought.

In checking these increasing armaments and in seeking the means of averting the calamities which threaten the entire world lies the supreme duty to-day resting upon all States.

Imbued with this idea, His Majesty has been pleased to command me to propose to all the Governments which have accredited representatives at the Imperial Court the holding of a conference to consider this grave problem.

This conference would be, by the help of God, a happy presage for the century about to open. It would converge into a single powerful force the efforts of all the States which sincerely wish the great conception of universal peace to triumph over the elements of disturbance and discord. It would at the same time cement their agreement by a solemn avowal of the principles of equity and law, upon which repose the security of States and the welfare of peoples.

COUNT MOURAVIEFF

ST. PETERSBURG, *August* 12/24, 1898.

CIRCULAR NOTE OF COUNT MOURAVIEFF TO THE DIPLOMATIC REPRESENTATIVES ACCREDITED TO THE COURT AT PETROGRAD

ST. PETERSBURG, *December* 30, 1898.

MR. ENVOY :

When, during the month of August last, my august master commanded me to propose to the Governments which have representatives in St. Petersburg the meeting of a conference with the object of seeking the most effective means of ensuring to all peoples the benefits of a real and lasting peace and, above all, of limiting the progressive development of existing armaments, there appeared to be no obstacle in the way of realization at no distant date of this humanitarian scheme.

The cordial reception accorded by nearly all the Powers to the step taken by the Imperial Government could not fail to strengthen this expectation. While highly appreciating the sympathetic terms in which the adhesions of most of the Powers were expressed, the Imperial Cabinet has been also able to collect, with lively satisfaction, evidence of the warmest approval which has reached it, and continues to be received, from all classes of society in various parts of the world.

Notwithstanding the strong current of opinion which exists in favour of the ideas of general pacification, the political horizon has recently undergone a decided change.

Several Powers have undertaken fresh armaments, striving to increase further their military forces, and in the presence of this uncertain situation it might be asked whether the Powers consider the present moment opportune for the international discussion of the ideas set forth in the circular of August 12/24.

In the hope, however, that the elements of trouble agitating political centres will soon give place to a calmer disposition of a nature to favour the success of the proposed conference, the Imperial Government is of the opinion that it would be possible to proceed forthwith to a preliminary exchange of ideas between the Powers, with the object :

a. Of seeking without delay means for putting a limit to the progressive increase of military and naval armaments, a question the solution of which becomes evidently more and more urgent in view of the fresh extension given to these armaments ; and

b. Of preparing the way for a discussion of the questions relating to the possibility of preventing armed conflicts by the pacific means at the disposal of international diplomacy.

In the event of the Powers considering the present moment favourable for the meeting of a conference on these bases, it would certainly be useful for the cabinets to come to an understanding on the subject of the program of its work.

The subjects to be submitted for international discussion at the conference could, in general terms, be summarized as follows :

1. An understanding stipulating the non-augmentation, for a term to be agreed upon, of the present effective armed land and sea forces, as well as the war budgets pertaining to them ; preliminary study of the ways in which even a reduction of the aforesaid effectives and budgets could be realized in the future ;

2. Interdiction of the employment in armies and fleets of new firearms of every description and of new explosives, as well as powder more powerful than the kinds used at present, both for guns and cannons ;

3. Limitation of the use in field fighting of explosives of a formidable power, such as are now in use, and prohibition of the discharge of any kind of projectile or explosive from balloons or by similar means ;

4. Prohibition of the use in naval battles of submarine or diving torpedo boats, or of other engines of destruction of the same nature ; agreement not to construct in the future war-ships armed with rams ;

5. Adaptation to naval war of the stipulations of the Geneva Convention of 1864, on the base of the additional articles of 1868 ;

6. Neutralization, for the same reason, of boats or launches employed in the rescue of the shipwrecked during or after naval battles ;

7. Revision of the declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, and not yet ratified ;

8. Acceptance, in principle, of the use of good offices, mediation, and voluntary arbitration, in cases where they are available, with the purpose of preventing armed conflicts between nations ; understanding in relation to their mode of application and establishment of a uniform practice in employing them.

It is well understood that all questions concerning the political relations of States, and the order of things established by treaties, as in general all questions which do not directly fall within the program adopted by the cabinets, must be absolutely excluded from the deliberations of the conference.

In requesting you, sir, to be good enough to apply to your Government for instructions on the subject of my present communication, I beg you at the same time to inform it that, in the interest of the great cause which my august master has so much at heart, His Imperial Majesty considers it advisable that the conference should not sit in the capital of one of the Great Powers, where are centred so many political interests, which might, perhaps, impede the progress of a work in which all countries of the universe are equally interested.

Please accept, Mr. Envoy, the assurance of my highest consideration.

COUNT MOURAVIEFF

CIRCULAR INSTRUCTION OF MR. DE BEAUFORT, MINISTER OF FOREIGN AFFAIRS, TO THE DIPLOMATIC REPRESENTATIVES OF THE NETHERLANDS

THE HAGUE, *April* 6, 1899.

MR. . . . .

The Imperial Government of Russia addressed on August 12/24, 1898, to the diplomatic representatives accredited to the Court of St. Petersburg a circular expressing a desire for the meeting of an international conference which should be commissioned to seek the most effective means of ensuring to the world a lasting peace, and of limiting the progressive development of military armaments.

This proposal, due to the noble and generous initiative of the august Emperor of Russia, having met everywhere with a most cordial reception, and obtained the general assent of the Powers, his Excellency the Minister for Foreign Affairs of Russia addressed December 30, 1898/January 11, 1899, to the same diplomatic representatives a second circular, giving a more concrete form to the generous ideas announced by the magnanimous Emperor and indicating certain questions which might be specially submitted for discussion by the proposed conference.

For political reasons the Imperial Russian Government thought that it would not be desirable that the meeting of this conference should take place in the capital of one of the Great Powers, and after being assured of the assent of the Governments interested, it addressed the Cabinet of The Hague with a view of obtaining its consent to the choice of that capital as the seat of the conference in question. I at once took the orders of Her Majesty the Queen in regard to this request, and I am happy to be able to inform you that Her Majesty, our august sovereign, has been pleased to authorize me to reply that it will be particularly agreeable to her to see the proposed conference meet at The Hague.

Consequently, and in accord with the Imperial Russian Government, I have the honour to instruct you to invite the Government of . . . . to be good enough to be represented at the above-mentioned conference, in order to discuss the questions indicated in the second Russian circular of December 30, 1898/January 11, 1899, as well as all other questions connected with the ideas set forth in the circular of August 12/24, 1898, excluding, however, from the deliberations everything which refers to the political relations of States or to the order of things established by treaties.

I trust that the Government to which you are accredited will participate in the great humanitarian work to be entered upon under the auspices of His Majesty the Emperor of All the Russias, and that it will be disposed to accept our invitation and to take the necessary steps for the presence of its representatives at The Hague on May 18, next, for the opening of the conference, at which each Power, whatever may be the number of its delegates, will have only one vote.

Please accept, Mr. . . ., renewed assurance of my high consideration.

W. H. DE BEAUFORT

PART II

A. LIMITATION OF ARMAMENTS AND MILITARY EXPENSES

1. MEMORANDUM OF PRINCE METTERNICH [1]

ONE question which had occupied the attention of the Governments of Russia and Austria since the Congress of Vienna was that of disarmament, which was raised by the Prince Regent of England. The latter's idea was that an international conference, composed of men of military training, acting under full powers from the great nations of Europe, should determine the normal basis in times of peace for the armies of each Power. The Russian Government welcomed this proposition of England in a very sympathetic spirit and at the same time expressed the desire that a 'natural status of peace' among European nations should also be fixed 'in the future congress'.

Emperor Alexander I wrote to Lord Castlereagh on March 21, 1816:

> It is necessary that this disarmament be effected with the same agreement and striking loyalty that has decided the safety of Europe and which alone can to-day ensure its happiness.

As for Austria, it took the plan under serious consideration, being the more strongly led to do so because its finances were in a deplorable condition. Prince Metternich announced at this time in a special *Memorandum* his opinion on the *establishment of standing armies in general*. From the point of view of domestic order, standing armies certainly formed an indispensable aid to Governments. But, continued the prince, it would be an error to consider them as the *sole*, or the surest support of Governments. 'The real strength of princes is more truly found in their system of government and the principles upon which they base their administration, in a word, in what forms a real moral force, than in a great array of military strength.'

A very large army presents a considerable danger even when maintained for preserving domestic order of a State, because it exhausts resources which are indispensable for a wise administration of the people. This danger is particularly great at the present time (1816), when armies themselves are imbued with revolutionary ideas and given up to aspirations which cannot be realized without overturning the existing order of public affairs. Passing then to an examination of this question from the point of view of foreign policy, the Austrian Chancellor sees no further use for enormous armies at a time when the Great Powers of Europe have definitively fixed their territorial limits by common agreement, and do not desire to enlarge or restrict them. In the face of such a disposition on the part of Governments, armies of excessive size can only provoke the danger and fear of a breach of the peace of Europe.

[1] Cf. Martens, *Recueil des traités et conventions conclus par la Russie avec les Puissances étrangères*, vol. iv, p. 36; vol. xi, p. 258.
Prince Metternich (1773–1859), Austrian diplomat and statesman.

In view of all of these considerations, the Austrian Government had itself reduced its effective military force, and it accepted the English proposition with pleasure. The question could be decided in the future conference which would be convoked in accordance with the convention of November, 1815. The Court of Austria consented to support the proposition of the Russian Government concerning a ' natural status of peace ' for European armies and nations.

2. LETTER OF NAPOLEON III TO THE SOVEREIGNS OF EUROPE[1]

In the presence of events which daily arise and demand attention, I believe it necessary to speak frankly to sovereigns to whom is confided the destiny of nations.

Whenever far-reaching disturbances have shaken the foundations of States and altered their boundaries, solemn agreements have followed to arrange the new elements and, by rearranging them, to sanction the transformations which have been accomplished. Such were the purposes of the Treaty of Westphalia in the seventeenth century and the negotiations at Vienna in 1815. On the latter basis the political structure of Europe rests to-day; but Your Majesty is not ignorant of the fact that it is crumbling away on every side.

If the situation in the different countries is carefully considered, it is impossible not to recognize the fact that the treaties of Vienna have been destroyed, modified, ignored or attacked at nearly every point. As a result we have duties without law, rights without title, and claims without bounds. A danger more to be feared is that the improvements brought about by civilization, which has bound people together by the solidarity of material interests, would make war still more destructive.

That is a subject for serious consideration. Let us not wait to reach a decision until sudden, overwhelming disturbances confuse our judgment and lead us in opposite directions in spite of ourselves. I therefore propose to Your Majesty to settle the present and ensure the future through the convocation of a congress.

Having been called to the throne by Providence and by the will of the French people, but having been educated in the school of adversity, I should perhaps be less entitled than some other to ignore both the rights of sovereigns and the legitimate aspirations of peoples. Therefore I am ready, without having any preconceived ideas, to bring to an international council a spirit of moderation and justice, the ordinary lot of those who have endured so many and diverse trials.

If I take the initiative in such a matter, I am not moved by vanity ; but, as I am the sovereign to whom has been attributed the most ambitious projects, I feel at heart that I should prove by this frank and sincere proposal that my only purpose is to attain the pacification of Europe without any disturbance. If this proposal appears seasonable, I beg that Your Majesty will accept Paris as the place of meeting.

In case the princes who are allies or friends of France should deem it proper to increase the dignity of the deliberations by their presence, I shall be proud to offer them cordial hospitality. Europe might perhaps see some advantage in making the capital from which

[1] *Archives diplomatiques, 1863*, iv, p. 188.
Napoleon III (1808–73), President of the Second French Republic, and later Emperor of the French.

the signal of revolution has so often gone forth, the seat of a conference intended to promulgate the bases of general peace.

I take this opportunity, etc., etc.

Written at Paris, *November* 4, 1863.

NAPOLEON

Countersigned : DROUYN DE LHUYS

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3. PROPOSITION OF MR. ROLIN-JAEQUEMYNS[1]

At the meeting of the Institute of International Law at Heidelberg in 1887 Mr. Rolin-Jaequemyns proposed : ' That it examine from the point of view of international law whether, and to what extent, and by what means, it would be possible to restrict the effective forces of European States and the amount of their military expenses in time of peace within certain proportionate limits to be determined by treaties between those States.'

Then, upon developing his theme, the speaker stated that it covered by implication the following three questions :

1. Is it possible, from the point of view of the principles of international law, for two or more States mutually to agree by treaty to limit their respective armaments ?

2. To what extent could such a mutual agreement be made by the different European States, and, if it were made, would it bind them ?

3. What means should be employed to ensure an effective sanction for such a treaty ?

The question is : *How far do the generally admitted principles of international law oppose or support the fixing of such a limit by treaty, and, in case of necessity, the adoption of the necessary measures to guarantee the observance of such treaty ?* It is enough to state the question thus to see that the discussion, restricted to these points, does not run the risk of degenerating into a political argument. Now this statement simply summarizes from the point of view of principle, extent, and sanction, the three separate questions which I have just formulated.

In order to make this point very clear,—and it is of prime importance, because, once established, it will, I hope, give me a means of meeting very easily the other objections, —I am going to address myself to the vital principle the scope of which the Institute will first of all have to determine when it takes under consideration the question I am submitting to it.

This vital principle is the independence, the autonomy of every sovereign State, and as a corollary thereof, the right and the duty which it has to defend its existence by all preventive or present means within its power. This principle, which will doubtless be invoked in opposition to my proposition, I recognize and claim, not merely as a patriot, but as a jurist. I agree that the State which renounces the right to defend itself commits

[1] Cf. *Revue de droit international*, vol. xix (1887), pp. 398–404.
Gustave Henri Ange Hippolyte Rolin-Jaequemyns (1835–1902) was a founder of the Institute of International Law and of the *Revue de droit international et de législation comparée*, of which he was editor in chief for many years. He served as Minister of the Interior of Belgium (1878–84), general adviser to the Siamese Government (1892–1901), and latterly was a member of the Hague Permanent Court.

suicide as much as the State which renounces the right to exist. I would not admit the legality of such a hypothesis for my little country any more than for the largest State.

If there are any among us who fear that the debate upon my proposal will become the pretext for attacks upon the armaments of this or that State, considered individually, let them therefore be reassured. The question is not to judge, still less to condemn, the sacrifices which this or that nation in the present status of international relations believes indispensable to impose upon itself in order to remain the master of its domain. The question is a higher and more general one. It seeks to know whether there is not, alongside the individual right to exist and defend oneself, a right, and a common right and duty, for all States forming part of one and the same group, to prevent the constant increase of means of defence from becoming the cause of exhaustion, decadence, economic and social disorganization, for the entire group. In other words, does not the principle of life which creates rights and imposes on each State, considered by itself, individual duties, impose collective duties upon the entire group of European States ? If it is suicidal for a nation to remain unarmed in the midst of armed neighbours, is it not another method of suicide for a group of nations, united by a common civilization, to allow themselves to be carried away in a body, in a mad rush to cast a constantly increasing portion of their money, credit, physical and intellectual activity each year into the ever-expanding gulf of military expenditures and armaments ?

It is impossible to deny that such a situation exists, and that the end of the present course in Europe can be only war—the destruction of the weakest by the strongest,—or ruin—the destruction of the poorest by the richest. Even those among us who have most formally declared themselves in opposition to my proposition, will not venture to maintain that the present situation is normal. Furthermore, the famous Marshal von Moltke several months ago defined this situation as follows : ' All Europe,' he said to the Reichstag on December 4, 1886, ' all Europe is under arms : wherever we may look about us we see our neighbours, on the right, on the left, armed and overladen with the equipage of war the weight of which it is difficult to bear, even for a rich country. *This situation cannot continue indefinitely . . .*'

I shall not repeat here what I said in my note submitted to the Institute last May. I shall not speak, therefore, in detail of the three million men, nor of the four billions of annual expenses, which are the figures already reached at the beginning of the present year by the effective forces in time of peace and the military expenditures of the seventeen States of Europe.[1] I shall not dwell further upon the dangers of every nature, political, economic, social, which follow such a state of affairs and its rapid aggravation, nor of the disastrous inequality which it creates between the European and American States in the battle for life. I simply ask whether we may consider this question foreign to international law,—the question as to whether a situation so eminently dangerous imposes upon European Powers the strict duty to confer together, if not to end it at a blow, at least to arrest its development.

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[1] The exact totals are, according to the *Statesman's Year Book* of 1887, 3,031,504 men and 3,960,718,500 francs. The effective forces in time of war are more than ten million men, and the expense of their maintenance during a year would exceed thirteen billions.

4. OPINION OF MR. LORIMER, PROFESSOR IN THE UNIVERSITY OF EDINBURGH, ON THE QUESTION OF DISARMAMENT [1]

It seems to me that before discussing this question we should consider the following points as established in advance, as the premises from which we should derive the final solution :

1. *No free State shall consent to a change of any kind whatever in its relation to other States, if this change is to result in diminishing its defensive strength, or hindering its future development.*

A modification of the *statu quo*, or a re-establishment of the balance of power cannot be attained by peaceful negotiation. To impair existing conditions in this regard nothing less than war would be required, or the gradual action of those causes of progress or decadence which are beyond any immediate human control. If, therefore, our purpose is to diminish the chances of war, we must accept the equilibrium now established, however unstable or unsatisfactory it may seem to us.

2. If the preceding proposition is correct, it follows that *our efforts in the direction of disarmament should inevitably be based upon the principle of proportion*, that principle which all publicists, ancient and modern, acknowledged to be of such importance up to the time it was trodden under foot and lost from view in the trouble and confusion of the French Revolution. If we follow this principle, whatever may be the absolute reduction in the effective force of a State, its relation to other States will remain the same, because a corresponding reduction will have been made in the effective forces of all other States with which it might come in conflict.

3. *No independent State shall submit to any supervision of the administration of its revenues or of its domestic affairs.*

Each State should be left to decide for itself the manner in which it should proceed to reduce its armament, either by the decrease of the strength of the armies (standing armies, volunteer troops, or others), or by the abandonment of fortresses, of war vessels, gun-boats, torpedo-boats, etc. The requirements for the defence of States differ from State to State and vary so continually that it is neither possible nor desirable for them to agree upon a uniform application of their military expenditures. It seems to me that all we can hope for is to persuade them to agree to a uniform reduction of these expenditures themselves. A treaty by which they would agree to reduce their present war budgets by 25 or 50 per cent, or, in view of the inevitable changes which must occur in the basis of taxation, to diminish the fraction of their total revenue which they will devote to military expenses, would result in maintaining the present relationship between their respective forces, while leaving them free to organize such forces according to their necessities, present or future. The risk of war would be diminished by the limitation upon the combustible matter in each community, while the relief from taxation and compulsory service would increase wealth and furthermore direct the attention of each generation towards occupations of civil life.

Is it objected that the diversity in the character of the populations of the different States would tend to impair the equal diminution of their real military force, if we limited

[1] *Revue de droit international*, vol. xix (1887), p. 473.
James Lorimer (1818–90), an eminent Scotch publicist, was professor of public law and the law of nature and nations in the University of Edinburgh and a member of the Institute of International Law. In the field of international law his principal work is *The Institutes of the Law of Nations*, 2 vols., Edinburgh and London, 1884.

ourselves to demanding an equal diminution of expenditures? Russia, England, and France have within their more or less direct control, barbarian or semi-barbarian hordes which they might place in line and keep under arms, even in Europe, at less expense than a corresponding number of European troops! This objection is more apparent than real. Such troops would never stand before an almost equal number of European soldiers. Real military strength therefore would continue to be approximately proportional to the cost thereof. The growth of transportation facilities has in recent times rendered possible the employment of Asiatic or African auxiliaries in European wars. But we should not forget that this undoubted result of such growth will probably be more than counterbalanced in the long run by a contrary effect. The construction of railroads and canals tends to develop local industry and turn the energy of native populations dependent upon us from military occupations and toward the works of civil life. This will result in a diminution, perhaps slow, but continued, of the exclusively warlike classes who, at least in India, still have no other desire than to be employed in the army.

There is a question of considerable and growing importance to which I desire to call the attention of my colleagues in the Institute, although I do not myself see any satisfactory solution thereof. It is evident that at present we are only in the first stages of the application of explosives to warfare. Although enormous sums have been and are being expended upon the manufacture of torpedoes, and upon the construction of vessels intended to discharge them, or, as we say, to ' sow ' them, their effect in a maritime war has not yet been experienced. It is probable that non-maritime nations exaggerate the importance of these engines considerably. But the torpedo is doubtless only one of the numerous forms of explosives which will be used in future wars.

If no other limit is placed upon the use of these new methods of destruction except that of the discoveries of chemistry and the inventions of the mechanician, it may result in augmenting the horrors of war almost beyond conception. It may be that a simple bomb well aimed may cause the destruction of an army and change the course of history. But is there a single State which would consent to bind itself, or limit itself, in the use of these new methods, which are equally as effective for defensive as for offensive operations? Or, if a nation did so bind itself, does the manner in which treaties have been observed in the past indicate that such treaties would be respected in a war *à outrance*? Would it be possible to prevent, to limit, or even to regulate, the use of gunpowder by treaty? In the absence of an international executive I fear that the answer to these questions can only be negative in the future as it has been in the past. Until international law reaches such a stage that the observance thereof will be guaranteed by some positive system, its only sanction consists in a coalition of States determined to maintain it. It might not be impossible for such a coalition to succeed in imposing certain rules which might be decided upon among its members as to the use of explosives, in the same way that it would impose certain limits upon their respective armaments. But such a coalition furnishes the edifice of international law with only fragile support. That is why I repeat what I have so often said and written: the final problem of our science and international politics is the formation of international legislative, judicial, and executive powers.

But the question of disarmament is too urgent to await the formation of an international body which cannot be dreamed of at present, however desirable or even indispensable it may be in the final analysis. Diplomacy furnishes only a very imperfect equivalent of the regular operation of the powers which formulate and apply the laws within a State.

But this equivalent is the only one to which the international jurist may apply, and we must make the best of it.

From an economic point of view the disadvantages of partial disarmament may be asserted, because of the influence which it will have on the labour market. The market is restricted in many directions. Is this the time to throw into it hundreds of thousands of the strongest men of each community ? I do not deny that the first effect of the measure would be to cause some disarrangement and some difficulty on this point. We could, in order to handle the transition, make the reduction gradual, limiting it, for example, to 5 per cent per annum until the agreed limit was reached. The difficulty in any case would be only temporary. Although the men under arms do not receive wages they consume them. The costly luxury of their maintenance is borne by the class which earns wages, and the maintenance of this luxury diminishes by that much the resources which this class might use for its necessities or enjoyment. Whether we regard labour as paid by capital or as self-sustaining, it is certain that it is only by labour that those original sources of wealth, moral or material, which nature has placed at our disposition, may be utilized, and it would be impossible to maintain that no loss results from the employment of labour in non-productive, not to say destructive occupations. Looked at from this point of view the limitation of armaments in the present state of affairs in Europe might be compared to the ligature of an artery from which the life of a man is ebbing away with his blood. A certain local difficulty may result from the stopping of circulation in the regions nourished by the artery, but the blood will pass through other channels, circulation will be re-established, and the patient will avoid death. By a strictly analogous process the fruitless labour of the soldier will be replaced by the fruitful labour of the workman and the artisan. What men lack is not the opportunity to work, but the means to support them and pay them while they work. Now, more wealth signifies higher wages and more opportunities to enter upon new enterprises. It will require a great deal of time still to exhaust the resources of our planet, and for man to finish gathering all of the treasures of well-being which God has placed at his disposition. The principal cause of this depression, of which there is much talk, and which attacks industry in all forms, is found in this ruinous rivalry of armaments and military expenditures in which all the great nations of Europe have permitted themselves to become engaged, and into which they are dragging the less important States. The progress of exhaustion is rapid, and we have still worse days in store if this artery cannot be closed.

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5. REFLECTIONS UPON THE GROWING ARMAMENTS OF EUROPE BY COUNT KAMAROVSKI [1]

The introduction of an *international organization* becomes more urgently necessary from year to year, especially in view of the most serious *practical* interests of nations.

We are now living in a period of hard times. Almost everywhere we hear complaints about the evil state of commerce and affairs in general, about the pitiful economic situa-

[1] *Revue de droit international*, vol. xix (1887), p. 479.
Count Leonid Kamarovski (1846–1912) was professor of international law in the University of Moscow, a member of the Institute of International Law, and author of the well-known and authoritative treatise on an International Court of Justice which appeared in the Russian language in 1881, and was translated into French by Sergiei Westman under the title *Le tribunal international* (Paris, 1887).

tion ; we point out the painful conditions under which the labouring classes eke out a bare existence, and the growing impoverishment of the masses. And in spite of that, States, in their endeavour to maintain their independence, almost pass the bounds of reason. On every hand new taxes are introduced, which, in our day, burden the population more and more. Cast a glance at the budgets of the European States of this century, and we shall be especially surprised by their enormous size and constant increase. Whence comes this evil, then, which threatens to drag the whole of Europe sooner or later into inevitable bankruptcy ? It is certain that it is principally due to the growing increase of *military expenses*, which ordinarily swallow up a third, and sometimes a half, of the European budgets. And what is more to be deplored is the fact that so long as the present state of affairs continues we can scarcely foresee an end to this increase in the budgets and the accompanying impoverishment of the masses. What is socialism itself if it is not, at least in a large measure, a protest against this abnormal condition in which the greater part of the population in our section of the globe finds itself ?

It is evident that Governments have already understood this for a long time, if not as a matter of theory, and out of love for the abstract principles of equity, at least because they feel more and more how heavy and painful is the burden of the demands actually made by the present system. Then, too, they have successively engaged in attempts to relieve the masses and combat the evil which springs from the proletariat. It is not difficult to see that these measures may be placed in three categories. On one side, we observe a return to the *colonial policy*, the desire to appropriate new lands in other parts of the world ; on the other hand, the efforts of Governments to revive industry and the economic well-being of the people by the *increase of import duties on foreign goods*. This leads to the strengthening of protectionism, which tends almost everywhere to replace free trade, so much in favour during the decade from 1860 to 1870. In the third place, Governments, in their battle with socialism, publish domestic *laws* on the insurance of workmen, etc.

It must be admitted that all of these measures are weak and ineffective. If, on the one hand, they ameliorate to a certain extent the evil against which they are directed, on the other hand, they do not strike at the root of the evil, but on the contrary produce another evil. So far as the colonial policy is concerned, by which Prince Bismarck and his partisans wish to increase the well-being of their country, it is certain that it increases the antagonism among the peoples of Europe by carrying their competition into other parts of the world, and that it therefore tends far less to the pacification of European States than to the renewal of the rivalry and animosity of which the history of the sixteenth and following centuries shows many and sad examples. Besides, colonies are very expensive and, finally, do not long remain attached to the mother country. They may be compared to fruits which hang on the branches of the mother country until they become ripe. Emancipation, that is the law of their development.

The other measure, purely economic, is also a two-edged sword ; it is dangerous from the point of view of foreign relations of peoples, because it naturally calls forth reprisals. It causes what we call to-day ' an economic war '. If a State, with a view to developing its material well-being, forbids, or strongly restricts (by high import duties), the importation of foreign goods into its territory, this State is acting within its strict rights. But the same rights belong to other States, and if they suffer from our high tariff, they will naturally try to attack us in the same manner, that is strike at the most vulnerable point

of our economic system. This results in endless discussions which become all the sharper as they reach more deeply into the material interests of men. It is an underhand war among the peoples of Europe. This measure is dangerous also from another point of view, that of national policy, in the sense that, while really contributing sometimes to the development of some branches of national industry, it may also lead to the weakening of other branches, and while increasing the *quantity* of the products in the country, it may lower the *quality*. Confiding in the protection of the State, and not fearing foreign competition, the industries pay little attention to the well-being of the consumers, who might, under a more liberal economic *régime*, have received necessary products either better in quality or cheaper in price.

We therefore repeat that these two measures, colonial policy and protectionism, are in the final analysis retrograde measures, which keep awake antagonism among peoples. And the greater this antagonism becomes the more the people are obliged to arm themselves, as the French say, to the teeth. This is, in short, the situation in which the States of Europe find themselves to-day. Their rivalry in this sphere goes indeed to the height of folly!

It is more than time to stop and seriously reflect upon the question of *disarmament*. That is not an idle question,—it is the question *to be or not to be* among European nations and even throughout our civilization in general.

Contemporary militarism shows us clearly the insufficiency of the policy, whether foreign or domestic, of Christian peoples. They must get out of this situation at any price, if they do not wish in time to become the victims of *barbarians from within* (adherents of different destructive parties), as Rome and the ancient civilization succumbed to the attacks of barbarians from without.

The defenders of the monstrous contemporary militarism say that these innumerable armies are indispensable to States for their own preservation. With the development of our civilization the price of all necessaries of life has so increased that the expenses for the armies appear to be an insurance premium paid by us for those objects. But this argument rests upon an apparent sophism. There is no relation between the needs for interior security and the enormous existing armaments. Not only do these armaments greatly surpass the necessary bounds, but, being the principal cause of the economic crisis of our days, they are in fact the things which provoke and perpetuate this phantom of war which it is apparently their purpose to appease. The tension of the ' armed peace ' becomes so painful and insupportable for peoples that it will end by making them prefer war to this condition. The enormous armies themselves present an eternal menace against the peace of peoples.

How shall we get away from this nightmare which weighs upon the whole world ?

There is no possible way out if this or that State should act alone, because what Government would decide to set about its own destruction and diminish its military strength in the presence of neighbours which are better armed than it ?

It is therefore evident that this fundamental question can be decided *only in the field of international law*. But there, it seems to us that the serious and united efforts of peoples may be able to accomplish much. The silence of the greater part of modern internationalists on this subject astonishes us. Even the greatest authorities and those most disposed to embrace the cause of progress are silent when they fear they are going to touch upon this monster. However, it should be the duty of the science of international

law to raise its voice continually on this question. As we know, the Edinburgh professor, Mr. Lorimer, is a brilliant exception upon this point.

The question of disarmament may be decided in the most satisfactory manner only on condition that a judicial organization of the entire common life of States be created. But even now, we may point out some *preliminary conditions* for the acceleration of this solution.

In the first place, this question should be placed upon the *international plane*, as we have already said. We mean by that that *all of the States* of Europe are equally interested in studying and deciding this question practically. But the duty falls especially upon the Great Powers to take the initiative in the direction of this reform. For they are above all those which, by their military supremacy, eternally menace the general peace, in spite of all of the testimony of their official representatives and their press. Their armaments have reached such dimensions that, willing or not, these States are driven thereby to seek causes for dissension and rivalry among themselves in everything. From another point of view, their military forces have already, in fact, deprived secondary States of the possibility of making war. It is true that the latter may still, in concert with one of the Great Powers, have some weight in the political balance of Europe, but does not such an alliance remind us of the fable of the iron pot and the earthen pot ? Among the Great Powers the first example of good-will and sincerity should come from those Powers which are most responsible to-day for keeping Europe in eternal fear of war, that is, Germany and France, and after them, England and Russia.

The strong should inaugurate this reform, the weak should follow.

In the second place, it is indispensable to consider this question as *seriously* as possible and from *all points of view*. If Governments are in reality, as they pretend, animated by love of peace, they should be ready to make great sacrifices and to renounce many prejudices and claims to give to their peoples this most inestimable boon : peace, which is itself the first and fundamental condition of all human progress. That is why we must examine in advance in *preliminary conferences*, and then in a *final congress*, the causes which most inspire antagonism and enmity among European peoples. If we did not, even in these deliberations, reach positive results at first (in the sense of direct agreement), at least the meeting of such conferences would be of itself a step toward the pacific solution of a large number of disputes existing among peoples. Finally, we should have gained by this proceeding an opportunity to ascertain the general opinion of Europe on the questions in controversy.

In the third place, we do not interpret disarmament in the absolute sense of the word, but as a *joint gradual* movement, executed by the States of Europe in accordance with *principles agreed upon by common accord*. The principles which fix the number of troops may be regulated by the indices of *real life*. These would be, for instance, the population, the requirements of domestic security, the size of territories outside of Europe and colonies, etc., which it would be necessary to take into consideration in fixing the size of the armies. Mr. von Holtzendorff, in rejecting the idea of disarmament, observes that the States situated in the centre of Europe are more exposed to danger of attack than those on the outside. The position of Germany, for instance, is more perilous than that of Russia, in view of the fact that the latter cannot be threatened from more than one side (west), and the former may be threatened from several sides at once. Mr. von Holtzendorff seems to forget that the reform proposed by us must be general and simultaneous ; therefore, it

would not menace some any more than others. The greatest danger for all, to-day, undeniably consists in the general distrust, and in the disposition of each to attack its neighbour on the most frivolous pretexts.

In the fourth place, in view of the extreme complexity of this reform and its novelty in the practice of States, we might recommend its adoption for a certain *period*, in order to accustom Governments and peoples to its full adoption in the future. This period might be fixed in accordance with experience, after a mature study by all the States of Europe.

By that method the first really serious attempt would be made, not in words, nor on paper merely, for the pacification of European States.

In the fifth place, so far as the *guaranties* of the reform which we are discussing are concerned, they would be furnished by the *collective protection* of all the States which might have adopted the reform, and in time, by a more effective protection, that of *international organization*. A State which violated the conditions set forth in the act of disarmament would by that very fact excite all the other States against it. We might, on this point, provide in the act of progressive disarmament a complete system of repressive measures, carefully worked out. And later, we might finally decide the last great question, viz., the organization in Europe of an *international police force* which, we might say, would take upon itself a part of the force concentrated in the different national armies, but which, acting in all its spheres of action according to the strict principles of international law, would be the guardian of the general peace and justice upon earth. Doubtless the organization of such a force would be a very difficult work, but the good which would come therefrom would be so great that internationalists should work with zeal toward the solution of this problem.

Furthermore, the perfection of an international organization by giving it such a guaranty is a goal toward which States are only beginning to grope their way. But if they never attain this goal, the *consequences* of their gradual and simultaneous *disarmament* will have procured for them inestimable blessings in both their domestic and foreign relations.

Thanks to the mutual confidence which would then be established between peoples, their Governments would have at their disposition immense material resources, which they now dissipate unproductively for their armies and armaments, and which they might in the future devote to the improvement in all directions of the life of their peoples. They might then employ greater sums in the sanitation of the country, in public instruction, betterment of justice, increase of domestic security, the uprooting of the proletariat and socialism, in a word, in the cure of all those horrible plagues which gnaw at all of the European States to-day. This reform would permit them to found in peace colonies in other parts of the world for the surplus of their population and to open markets there for their products. A work of this kind might be undertaken by all European States together. Not only would this truly humanitarian and Christian policy increase the well-being and the security of the masses, but it would contribute to the improvement of the soil and the development of its productive energy.

Notwithstanding these innumerable works, and even others, the Governments which consider seriously the question of disarmament would be able to lighten the financial burden which weighs upon the people, and, on the other hand, to battle with more success against the enemies of domestic order and security. In short, whatever the defenders of

the present status may say, militarism, more than anything else, supports not only wars, but also revolutions in modern States.

Let no one object that this reform may enervate morally the peoples of Europe and leave men able to enjoy only material things. Disarmament as we understand it does not at all signify the suppression of the military forces of States, but their reduction to the actual requirements of domestic security, and their renunciation of all attempts against the independence and liberty of other peoples placed under the protection of the international organization. This would not result in any detraction from the high mission of warriors to be the guardians of the liberty and independence of their fatherland. Disarmament in itself would not prevent the discipline of the male youth of the population in military exercises.

It probably would not cause war to disappear entirely, but it would make war rarer and more just.

We refuse absolutely to look upon war, as do Count von Moltke and its numerous apologists, as the principal counter-irritant for the moral weakening and decadence of peoples.

The latter pass into decline like individuals, not by peace, but by contempt for the moral principles which govern the life of mankind. The weakening of these principles leads to wars which only accelerate the fall of nations by bringing to them instead of liberty the chains, sometimes golden, but always heavy, of domestic and foreign servitude.

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6. DAVID DUDLEY FIELD ON A LIMIT OF PERMANENT MILITARY FORCE[1]

In time of peace, the number of persons employed at any time in the military service of a nation, whether intended for land or sea, shall not exceed one for every thousand inhabitants.

A large standing army is not only the enormous burden that it has been described, but it is a provocative to war. The arming of a nation should be looked upon very much as the arming of individuals. A man may keep arms in his house, to be used on occasions, but if he walks abroad, always armed to the teeth, he speedily gets into a quarrel. So with a nation. The peace of society would certainly be endangered by the general practice of wearing arms. It was once so. And since social manners have been benefited by a general disarmament of individuals, it should seem that, for a similar reason, national manners would be benefited by a like process.

Examples of partial national disarmament are not wanting. The treaty between the United States and Great Britain, made at the close of the last war between them, stipulated that neither should keep ships of war upon the great lakes that divide them.[2] The Treaty of Paris, which closed the Crimean War, provided for the disarmament of Russia in the Black Sea.

The object of a military establishment is security, internal and external. The standing army of the United States is 30,000, giving one soldier to every thirteen hundred inhabi-

[1] David Dudley Field, *Draft Outlines of an International Code* (New York, 1872), Article 528, p. 367. Mr. Field (1805–94) was an eminent American publicist, lawyer, a partisan of codification of municipal law, and one of the founders of the Institute of International Law.

[2] Appendix, *post*, p. 113; this agreement is also printed in Pamphlet No. 2 of the Division of International Law of the Carnegie Endowment for International Peace.

tants. Yet these 30,000 men are scattered over a territory larger than that of any European State, and they have to keep watch of numerous Indian tribes, and to garrison many fortresses ; a greater number probably in proportion to the population than those of any other nation in the world. It is true that this country has no dangerous neighbours ; but if a general disarmament should be adopted, the most powerful European State would hardly be a dangerous neighbour to the weakest. For the purpose of internal security, one armed guardian of the peace to every thousand persons should seem to be sufficient, acting in conjunction with the militia, which should chiefly be relied on for security against internal commotion.

The building and arming of fortresses could scarcely be regarded with apprehension, inasmuch as they are defensive. Ships do not, it is true, fall within the same category, for they may be regarded as movable fortresses, but they are limited in their operations. To bind a nation not to build them and lay them up, should not be considered essential to the security of States.

Militia should be regarded as a strong arm of nations, both for internal peace and external defence. For the support of the civil powers, in the execution of the laws, no other force is so natural and proper. It is cheap, ready and efficient. For national defence against external attack, it may, upon emergency, be converted into formidable armies. The last war between France and Prussia has shown how powerful a force a citizen soldiery may be made. In France, the national guard has on many occasions been the defender of order. In the United States, the militia has not only supported the civil power in executing the laws, but it has formed the nucleus of an army of volunteers of the most effective kind.

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7. OPINION OF MR. MÉRIGNHAC [1]

Disarmament would be, in the first place, *simultaneous and collective*, because to the extent that it might become possible and obligatory when each one had consented thereto, it would, in the contrary case, become a misleading and imprudent act of such gravity that no Government would care to assume the responsibility therefor. Disarmament, in the second place, could only be *partial*, since, for the reasons above given, a domestic force is necessary to each State. Finally, it should be *proportional and progressive* ; for the decrease would be made by successive reductions until the contingents which might be fixed for each of the nations of Europe were reached. By adopting this procedure States could remain upon the defensive in the possible event that some of them might not keep their agreements. This thought answers the very proper prejudices of some publicists who call attention to the fact that if a Power disarms it exposes itself to the danger of not being followed by others. These fears, which might be seriously considered if immediate and complete disarmament were contemplated, would be baseless if disarmament were made in instalments under conditions carefully determined in advance. As for the methods of determining the ratio, we find several systems presented to us. The first consists in disarming in proportion to the population of each State. But it has been observed, and

[1] Mérignhac, *Traité théorique et pratique de l'arbitrage international* (Paris, 1895), section 549, p. 512. Alexandre Mérignhac, born 1857, is an associate of the Institute of International Law and professor of international law in the faculty of law of the University of Toulouse. Other works of this author on arbitration are *La conférence internationale de la paix*, Paris, 1900, and *Le traité d'arbitrage permanent au XX^ème siècle*, Paris, 1904.

rightly, that under this process certain Great Powers which have to-day armed forces approximately equal, would be made inferior to one another, for instance, France as compared with Germany. It would be better, it seems, to establish the effective forces of Europe upon the basis of their peace footing at the time of disarmament. The States would then be left in a position identical with that occupied by them before disarmament, because each would suffer a reduction in proportion to its former strength.

Two other methods of establishing the proportion of the forces to be retained by each nation after disarmament have been proposed, which seem to us powerless either to attain the desired goal, or to harmonize with the exigencies of military instruction. The first consists in fixing an age limit above which States would agree no longer to call their subjects to the colours, thirty years for instance. But by this plan the strength of the armies in time of peace would not be reduced, even if the above-mentioned limit were reduced to twenty-five years. In fact, on the present peace basis the soldiers of European armies are taken during the ages of twenty to twenty-five into the military contingents for a given period, the length of which varies with States. Such is, at least, the regular, normal situation.

The second method proposed consists in reducing the active service in times of peace to one year; it is subject to insurmountable technical objections. Now the two years' service seems too short to certain specialists; in all cases, everybody agrees in condemning annual service as absolutely insufficient for the formation of the list of officers, instruction of special corps and particularly of the cavalry, in short, for the education of the soldier in general. Annual service would produce troops of too little training for purposes of mobilization, would suppress that spirit of tradition and discipline in the army which only time can produce, and which forms truly national, homogeneous troops, and would take the army back to the ancient type of national guards. Besides, any one familiar with the matter knows that the time actually passed with the colours is always noticeably less than the theoretical time, because of sickness, furloughs, and various duties required by military service outside of instruction, properly speaking. A service of two years seems, therefore, from the foregoing, an indispensable minimum, if it is sufficient, which we are not here to discuss.

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8. OPINION BY IVAN S. BLIOKH (BLOCH), COUNCILLOR OF STATE [1]

Future War and Armed Peace in their Social and Economic Effects

The question as to what social and economic consequences a great war would now have in Europe is never seriously discussed by Governments, although it is of the highest importance. For the last decades have produced profound changes in social and economic fields, changes of still greater scope than those exhibited by the art of war and tactics.

[1] Johann von Bloch, *Der Krieg* (Berlin, 1899), vol. vi.

The above extract appears at pages 42 *et seq.* of a pamphlet entitled *Der Krieg der Zukunft; Auszug aus dem gleichnamigen russischen Werke des Staatsrats Johann von Bloch mit Genehmigung des Verfassers herausgegeben von Mitgliedern des Münchener Komitees für Kundgebungen zur Friedens-Konferenz* (Berlin, 1899). The author's work in the original Russian, of which the first above-mentioned publication in six volumes is a German translation, was published at Petrograd, and in French translation at Paris in 1898. In abridged form it has been translated into English by R. C. Long as *The Future of War in its Technical, Economic and Political Relations*, 1899.

Ivan Stanislavovich Bliokh (1836–1902), Polish financier, economist, and writer on military affairs, became known to the world at large as a propagandist of universal peace partly by his articles in French, German, and English periodicals, but more particularly through his great work above referred to.

However, the Governments diligently avoid such investigations, as the following example shows: when Freycinet was minister of war in France, a statement of the economic conditions under which a war would fail was discussed, *but it came to naught because of the opposition of the military circle.*—Let us try to imagine approximately what the situation is.

The wars of 1866, 1870–1, and 1877–8 were not wars which drew in the whole of Europe out of sympathy; a future war would, however, probably divide Europe into two immense camps and perhaps rage over the entire European continent.

Furthermore, armies have changed. Only Prussia in the last war led the militia in great numbers into the field; elsewhere the hosts were all active armies. To-day, however, war would tear from productive earning ability millions of men, who would hasten to the battlefield.

It is clear to every thinking man that if such an immense mass of workers is suddenly torn from productive activities it must lead to far-reaching disturbance in economic life.

The following figures, as of the year 1891,[1] may give every reader something to think about. If we compare the number of men from twenty to fifty years old with the number of soldiers over which the armies of Europe would have command in time of war, we reach approximately the following result:

	War strength of the armies Men	*Male population from 20 to 50 years old*	*Percentage*
Germany	3,600,000	9,508,000	37·8
Austria	2,062,000	7,683,000	27
France	3,600,000	8,013,000	45
Russia	4,556,000	22,669,000	20·1

Or in words: *over one-third* of the male population of Germany from twenty to fifty years of age, and almost *one-half* of the male population of France of the same age, would lay down the ploughshare and tool to seize the sword! What must the result be? Who will nourish those dependent upon these warriors? What will happen to the intellectual life of Europe?

Certainly this one question presents an embarrassing problem to the defenders of war, for the figures collected above show that even mobilization of the armies must cause serious disturbances in the economic life of peoples. War itself would of course produce still different consequences.

The time has long passed when a people could be self-sufficient, because it was a complete, vital, economic community. To-day, because of the highly developed civilization, the life threads of the economic organisms are most strongly interwoven, and it is better to say: there is only one economic organism—world civilization. There are, so to speak, no longer any independent *individual* national systems of political economy, there is only *one world system!* In Germany we consume American, Russian, Australian grain, the flesh of Austrian, Russian, American herds. We dress in American cotton and Australian wool. The products of our industries go to all countries in the world, and this market in foreign lands is necessary to the existence of our enormously developed industries. And it is the same in all civilized lands. Let man interfere with the exchange of the products of industry, or disturb commerce among countries, and this entire artificial mechanism of world political economy, built up on the basis of the exchange of goods, would come to a standstill. Such consequences, however, must inevitably follow the war of the future, a war of entire States in all their complex relationships, a war on land and sea. It will cause nations to hunger, and nameless misery to fall upon millions of families. Millions

[1] *Kriegsheere der europäischen Staaten* (Armies of European States).

of men will be robbed of their daily bread!—That is the blessing of war, which foolish and misguided men sometimes long for as the ' purifying storm ' !

If we wish to reach a decision upon these dangers, we must above all notice that peoples of different degrees of civilization are very differently affected in their social and economic existence by war. A country devoted especially to agriculture most easily revives from wounds inflicted by the sword. Land remains land, it bears its fruits after, as well as before, war ; at the most the destroyed dwelling-house and the burned barns of the farmer would have to be rebuilt. And the more primitive the methods of farming, the more easily the country revives. That is the explanation why, after the horrors of a seven years' war, the damages were repaired in so short a time. The more complex the methods of farming, however, the more highly cultivated the soil, just so much more does the farmer suffer from damage. The lack of workmen brings about, for instance, incompetent management of the fields, and this alone brings with it heavy damages for the year where the system of rotation of crops has been developed.

But the devastation of war bears especially heavily upon a country the population of which wins its support principally from industry and commerce. As a result of the interference with intercourse, stopping of sales of merchandise, the disturbance of credit, industrial activity must be restricted, if not entirely discontinued. *But if the factories are closed, then millions of workmen who must necessarily live from hand to mouth because of their diminished wages, remain without means of subsistence, and, with their families, become the prey of misery.*

This danger is all the greater *since, in all civilized lands, the outbreak of war must and does at once produce a striking rise in the cost of living.* This increased cost rises with the continuance of the war, while the means of subsistence of the working people rapidly decreases. But not only will the proletariat be seriously affected, the other classes of the population will feel it too. There will likewise be a *general fall in the value of securities of all kinds immediately upon the outbreak of war, while discount rises rapidly.* The more highly developed, however, industry and commerce are in any country, the more dependent is every industrial manager upon the ingenious credit system, and the greater will be the effect of a disturbance of the system upon the circulation of money. The number of bankrupts will increase beyond imagination, *and once again shall we see the ruin of thousands and thousands of families.* Therefore, people instinctively fear war ; if they realized, however, all of the catastrophes which it brings to each individual, they could not even think of the possibility of war without shuddering.

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9. OPINION OF BASTIAT[1]

Disbanding the Troops

It is with a nation as with a man. When a nation wishes to indulge itself, it must see whether the indulgence is worth the cost. For a nation security is the greatest of possessions. If it is necessary to arm a hundred thousand men and spend a hundred

[1] Bastiat, *Ce qu'on voit et ce qu'on ne voit pas*, chap. ii. This pamphlet was published in 1850. It may be found in the fifth volume of *Œuvres complètes de Frédéric Bastiat* (Paris, 1854), in which the above extract appears at page 340.

Frédéric Bastiat, the eminent French political economist, was born in 1801 and died in 1850.

millions to accomplish this, I have nothing to say. It is a possession purchased with a sacrifice.

Let no one, however, be misled as to the scope of my argument.

A representative proposes to disband one hundred thousand men to relieve the taxpayers of a hundred millions.

If we content ourselves with replying : ' These hundred thousand men and these hundred millions are indispensable to the national security ; it is a sacrifice, but without this sacrifice France would be torn to pieces by factional strife, or invaded by the foreigner,' —I have nothing to say here against this argument, which may be true or false in fact. but it does not contain theoretically any economic heresy. The heresy begins when it is sought to represent that the sacrifice itself is an advantage, because it is profitable to some one.

Now, if I am not deceived, the author of the proposition will scarcely have descended from the rostrum when some orator will rush forward to say :

' Disband one hundred thousand men ! Think of it ! What will become of them ? What will they live on ? Will there be work ? Why, don't you know that work is lacking everywhere ? That all vocations are overrun ? Would you throw them on the market to increase the competition and lower the level of wages ? When it is so difficult to gain a poor living, is it not fortunate that the State furnishes bread for one hundred thousand individuals ? Consider, too, that the army consumes wines, clothing, arms, and that it in this way produces activity in the factories, in the garrisoned towns, and it is, in fact, Providence for its innumerable purveyors. Do you not tremble at the thought of destroying this immense industrial movement ? '

You see that this argument leads to the retention of the hundred thousand soldiers for economic reasons, without regard to the necessities of the service. It is these reasons alone that I am to refute.

One hundred thousand men, costing the taxpayers one hundred millions, live and support their purveyors as far as the one hundred millions go : *that is what we see.*

But one hundred millions, gone from the pockets of the taxpayers, cease to support these taxpayers and their purveyors, as far as one hundred millions could go : *that is what we do not see.* Just make a calculation, figure, and tell me where you find any profit for the masses ?

As for myself, I will tell you where the *loss* is, and to simplify matters let us speak of one man and a thousand francs instead of one hundred thousand men and one hundred millions.

Here we are in the village of A. The recruiting officers make their rounds and take away a man. The tax collectors make their rounds and carry off a thousand francs. The man and the money are taken to Metz, one intended to support the other for a year without his doing anything. If you look only at Metz, why ! you are a hundred times right, the measure is very advantageous ; but if you cast your eyes on the village of A, you will decide otherwise, because, unless you are blind you will see that this village has lost a workman and the thousand francs which would pay for his labour, and the activity which, by the expenditure of these thousand francs, he would spread about him.

At first glance, it seems as if there were some compensation. The phenomenon which used to occur in the village takes place at Metz, that 's all. But here is the loss. In the village a man worked the ground and laboured : he was a working man ; in Metz, he

practises ' right dress ! ' and ' left dress ! ' : he is a soldier. Money and circulation are the same in both cases ; but, in one there were three hundred days of productive toil ; in the other there are three hundred days of unproductive toil ; of course, assuming that a part of the army is not indispensable to the public safety.

But now comes the disbanding of troops. You point out to me an increase of one hundred thousand workmen, competition stimulated, and the depressing influence which it exercises upon the wage-level. That is what you see.

But this is what you do not see. You do not see that to disband one hundred thousand soldiers is not to destroy one hundred millions, but it is to return them to the taxpayers. You do not see that by throwing one hundred thousand workmen on the market you, at the same time, throw into the market the hundred millions destined to pay for their labour ; that consequently the same measure which increases the *supply* of labourers increases also the *demand* therefor, whence it follows that your decrease in wages is an illusion. You do not see that before, as well as after the disbanding, there are one hundred millions corresponding to the hundred thousand men ; that the only difference is this : before, the country delivers the hundred millions to the hundred thousand men for performing manœuvres ; afterwards, it delivers the money to the men for labour. You do not see, in short, that when one taxpayer gives his money, either to a soldier in return for nothing, or to a workman in return for something, all of the further consequences of the circulation of this money are the same in both cases ; only, in the second case, the taxpayer receives something, in the first he receives nothing.—Result : a dead loss for the nation.

The sophism which I am fighting does not stand the test when we increase the numbers, which is the touchstone of principles. If, allowing for all compensation and examining all interests, there is a *national profit* in increasing the army, why not enroll under the colours all of the male population of the country ?

10. OPINION OF PRINCE L. E. OBOLENSKI [1]

Now that the high ideal of general peace and disarmament is approaching realization after seeming, even so recently, only a Utopia in the imagination of some men of genius —friends of humanity—it is of the utmost importance to examine this problem, the most beneficial of all, with regard to the conditions surrounding its practical execution.

I shall limit myself to presenting a single one of these conditions, which is the most important of all, if it be only because it will serve as the probable basis for the more important objections which will be made against the high ideal.

What, then, is this condition ?

As recognized in the declaration of our Minister of Foreign Affairs, in our day the larger portions of labour and capital are diverted from their natural purposes and wasted in an unproductive manner. We spend hundreds of millions to purchase terrible means of destruction, etc. It follows, therefore, that according to the laws of political economy and the most simple logic, disarmament, that is the stopping of industries manufacturing

[1] Extract from the *Novosti* (St. Petersburg News).
Leonid Egorovich Obolenski (1845–), Russian philosopher, journalist, and critic.

materials for war, will produce an immense multitude of several millions of unemployed workmen and as large a number of capitalists with no employment for their capital.

The number of unemployed workmen will increase even in the following two ways, viz., not only because the enormous enterprises exclusively designed for military purposes (including equipment, preparation of food supplies, etc.), will go out of business over night, but also because the millions of workmen who earned a livelihood therein in all countries will be obliged to search for work as ordinary labourers. In other words, the number of workmen in search of employment in one line of work will double, or perhaps treble, at a stroke.

Now, all the world knows that every increase of those who demand work lowers the value thereof, that is the wage-level. The enormous influx of workmen without work created by disarmament would be of such a character as to lower the level of wages even below the plane which it has occupied in recent times in Europe, and which, however, was already so low that according to the statistics, the average length of life of the working classes in Western Europe was already considerably less than that of the other strata of the population.

That is the principal objection, the principal obstacle against which we have already struck in the literature of the question we are considering, and it will inevitably be raised again.

I believe that this so-called insurmountable obstacle does not withstand a serious examination, and that it is possible to indicate now the outline of the theory by which it may be avoided.

However, I do not blind myself to the efforts which partisans of a general peace will be called upon to exert to explain the possibility and even beneficial character of the plan which I propose. Until the possibility thereof is, so to speak, made evident (especially to Europeans) we shall behold an enormous theoretical and practical resistance to general peace, a resistance which will come not only from the side of the capitalists interested in the maintenance of the former industries intended directly or indirectly for the needs of war and the maintenance of armies, but from the working class in general whose interest it is to see the level of wages maintained on the same plane. In order to realize the force of the resistance which these two classes will be able to present, it must be remembered that they exert a considerable influence on the legislative and political movement of the West.

What, then, is the remedy under discussion, how can we escape from the cursed circle in which humanity is struggling at the present time ?

The remedy is very simple, in reality, and partial allusion is made thereto in the economic literature of Western Europe.

States should plan in advance a series of productive public works in which the liberated capital and the unemployed workman may both find employment.

It is necessary that the capitalist and working classes be advised in advance that they will find plenty of channels ready to receive their superfluous activity and savings.

However, it is understood that the public works into which capital and muscular energy will be poured must be entirely new ; I mean that they should not compete with industries which already exist : otherwise they will serve no purpose, because they will only give to some what they take from others.

But is there any way to create industries of public usefulness out of whole cloth ?

Are there any needs which the State may take the burden of assisting, as Russia for instance has assumed charge of the sale of alcohol, of the construction of railroads, of the working of certain mines ?

There is no doubt that such needs exist. If they have not been noticed before, if we have not yet dreamed of satisfying them, it is simply because we have not had at our disposition either the immense capital which will now be out of employment, or the quality of labour which the new industries will be able to call upon after the disarmament.

It is, of course, the task of specialists to work out the details of the question.

But now, looking at the question only in a very superficial manner in its novelty, who does not see, at least in Russia, needs such as roads to be laid out, deposits of sand to be removed, streams and rivers to be deepened and cleared, land to be replanted with forests, steppes to be irrigated, marshes to be drained, etc., etc. ?

All of those needs, and I pass by many which are at least as important, are capable of furnishing work enough for immense bodies of labourers and enormous reserves of capital.

B. REGULATION OF THE LAWS OF WAR

1. DECLARATION OF THE CONGRESS OF PARIS, APRIL 16, 1856 [1]

The plenipotentiaries who signed the Treaty of Paris of March 30, 1856, assembled in Conference,

Considering :

That maritime law, in the time of war, has long been the subject of deplorable disputes ;

That the uncertainty of the law and of the duties in such a matter gives rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties and even conflicts ;

That it is consequently advantageous to establish a uniform doctrine on so important a point ;

That the plenipotentiaries assembled in Congress at Paris cannot better respond to the intentions by which their Governments are animated than by seeking to introduce into international relations fixed principles in this respect.

The above-mentioned plenipotentiaries, being duly authorized, resolved to concert among themselves as to the means of attaining this object ; and, having come to an agreement, have adopted the following solemn Declaration :

1. Privateering is and remains abolished ;

2. The neutral flag covers enemy's goods, with the exception of contraband of war ;

3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag ;

4. Blockades, in order to be binding, must be effective ; that is to say, maintained by a force sufficient really to prevent access to the enemy's coastline.

The Governments of the undersigned plenipotentiaries engage to bring the present Declaration to the knowledge of the States which have not been called upon to take part in the Congress at Paris, and invite them to accede to it.

[1] Martens, *Nouveau recueil général de traités*, vol. 15, p. 791.

Convinced that the maxims which they now proclaim cannot but be received with gratitude by the whole world, the undersigned plenipotentiaries doubt not that the efforts of their Governments to obtain the general adoption thereof will be crowned with full success.

The present Declaration is not and shall not be binding except between those Powers who have acceded or shall accede to it.

Done at Paris, April 16, 1856.

[Here follow the signatures of the plenipotentiaries of Their Majesties the Emperor of the French, the Emperor of Austria, the Queen of the United Kingdom of Great Britain and Ireland, the King of Prussia, the Emperor of All the Russias, the King of Sardinia, and the Emperor of the Ottomans.]

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2. CONVENTION FOR THE AMELIORATION OF THE WOUNDED IN ARMIES IN THE FIELD, AUGUST 22, 1864[1]

The Swiss Confederation ; His Royal Highness the Grand Duke of Baden ; His Majesty the King of the Belgians ; His Majesty the King of Denmark ; Her Majesty the Queen of Spain ; His Majesty the Emperor of the French ; His Royal Highness the Grand Duke of Hesse ; His Majesty the King of Italy ; His Majesty the King of the Netherlands ; His Majesty the King of Portugal and of the Algarves ; His Majesty the King of Prussia ; His Majesty the King of Wurttemberg, being equally animated with the desire to soften, as much as depends on them, the evils of warfare, to suppress its useless hardships and improve the fate of wounded soldiers on the field of battle, have resolved to conclude a convention to that effect, and have named for their plenipotentiaries, viz. :

[Here follow the names of plenipotentiaries.]

Who, after having exchanged their powers, and found them in good and due form, agree to the following articles :

Article 1

Ambulances and military hospitals shall be acknowledged to be neutral, and, as such, shall be protected and respected by belligerents so long as any sick or wounded may be therein.

Such neutrality shall cease if the ambulances or hospitals should be held by a military force.

Article 2

Persons employed in hospitals and ambulances, comprising the staff for superintendence, medical service, administration, transport of wounded, as well as chaplains,

[1] Cf. *United States Statutes at Large*, vol. 22, p. 940. The several contracting Parties to this Convention exchanged ratifications at Geneva, June 22, 1865. The following States adhered: Sweden, December 13, 1864; Greece, January 5/17, 1865; Great Britain, February 18, 1865; Mecklenburg-Schwerin, March 9, 1865 ; Turkey, July 5, 1865 ; Wurttemberg, June 2, 1866 ; Hesse, June 22, 1866; Bavaria, June 30, 1866 ; Austria, July 21, 1866 ; Russia, May 10/22, 1867; Persia, December 5, 1874 ; Roumania, November 18/30, 1874; Salvador, December 30, 1874; Montenegro, November 17/29, 1875 ; Serbia, March 24, 1876; Bolivia, October 16, 1879 ; Chile, November 15, 1879 ; Argentine Republic, November 25, 1879 ; Peru, April 22, 1880; United States, June 9, 1882; Bulgaria, May 27, 1884; Japan, June 11, 1886 ; Kongo Free State, January 25, 1889 ; Venezuela, August 2, 1894; Uruguay, June 20, 1900; Korea, January 8, 1903; Guatemala, April 13, 1903 ; China, June 29, 1904; Mexico, June 24, 1905 ; Colombia, June 7, 1906 ; Brazil, January 26, 1907 ; Paraguay; Cuba; Dominican Republic; Ecuador, August 3, 1907; Haiti; Panama.

shall participate in the benefit of neutrality, whilst so employed, and so long as there remain any wounded to bring in or to succour.

ARTICLE 3

The persons designated in the preceding article may, even after occupation by the enemy, continue to fulfil their duties in the hospital or ambulance which they serve, or may withdraw in order to rejoin the corps to which they belong.

Under such circumstances, when these persons shall cease from their functions, they shall be delivered by the occupying army to the outposts of the enemy.

ARTICLE 4

As the equipment of military hospitals remains subject to the laws of war, persons attached to such hospitals cannot, in withdrawing, carry away any articles but such as are their private property.

Under the same circumstances an ambulance shall, on the contrary, retain its equipment.

ARTICLE 5

Inhabitants of the country who may bring help to the wounded shall be respected, and shall remain free. The generals of the belligerent Powers shall make it their care to inform the inhabitants of the appeal addressed to their humanity, and of the neutrality which will be the consequence of it.

Any wounded man entertained and taken care of in a house shall be considered as a protection thereto. Any inhabitant who shall have entertained wounded men in his house shall be exempted from the quartering of troops, as well as from a part of the contributions of war which may be imposed.

ARTICLE 6

Wounded or sick soldiers shall be entertained and taken care of, to whatever nation they may belong.

Commanders in chief shall have the power to deliver immediately to the outposts of the enemy soldiers who have been wounded in an engagement when circumstances permit this to be done, and with the consent of both parties.

Those who are recognized, after their wounds are healed, as incapable of serving, shall be sent back to their country.

The others may also be sent back, on condition of not again bearing arms during the continuance of the war.

Evacuations, together with the persons under whose directions they take place, shall be protected by an absolute neutrality.

ARTICLE 7

A distinctive and uniform flag shall be adopted for hospitals, ambulances and evacuations. It must, on every occasion, be accompanied by the national flag. An arm-badge (brassard) shall also be allowed for individuals neutralized, but the delivery thereof shall be left to military authority.

The flag and the arm-badge shall bear a red cross on a white ground.

ARTICLE 8

The details of execution of the present Convention shall be regulated by the commanders in chief of belligerent armies, according to the instructions of their respective Governments, and in conformity with the general principles laid down in this Convention.

ARTICLE 9

The high contracting Powers have agreed to communicate the present Convention to those Governments which have not found it convenient to send plenipotentiaries to the International Conference at Geneva, with an invitation to accede thereto; the protocol is for that purpose left open.

ARTICLE 10

The present Convention shall be ratified, and the ratifications shall be exchanged at Berne, in four months, or sooner, if possible.

In faith whereof the respective plenipotentiaries have signed it and have affixed their seals thereto.

Done at Geneva, August 22, 1864.

[Here follow signatures.]

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3. ADDITIONAL ARTICLES OF OCTOBER 20, 1868[1]

The Governments of North Germany, Austria, Baden, Bavaria, Belgium, Denmark, France, Great Britain, Italy, the Netherlands, Sweden and Norway, Switzerland, Turkey, and Wurttemberg, desiring to extend to armies on the sea the advantages of the Convention concluded at Geneva August 22, 1864, for the amelioration of the condition of wounded soldiers in armies in the field, and to further particularize some of the stipulations of the said Convention, have named for their commissioners:

[Here follow the names of commissioners.]

Who, having been duly authorized to that effect, agreed, under reserve of approbation from their Governments, to the following dispositions:

ARTICLE 1

The persons designated in Article 2 of the Convention shall, after the occupation by the enemy, continue to fulfil their duties, according to their wants, to the sick and wounded in the ambulance or the hospital which they serve. When they request to withdraw, the commander of the occupying troops shall fix the time of departure, which he shall only be allowed to delay for a short time in case of military necessity.

ARTICLE 2

Arrangements will have to be made by the belligerent Powers to ensure to the neutralized person, fallen into the hands of the army of the enemy, the entire enjoyment of his salary.

[1] These additional articles were never ratified.

ARTICLE 3

Under the conditions provided for in Articles 1 and 4 of the Convention, the name 'ambulance' applies to field hospitals and other temporary establishments, which follow the troops on the field of battle to receive the sick and wounded.

ARTICLE 4

In conformity with the spirit of Article 5 of the Convention, and to the reservations contained in the protocol of 1864, it is explained that for the appointment of the charges relative to the quartering of troops, and of the contributions of war, account only shall be taken in an equitable manner of the charitable zeal displayed by the inhabitants.

ARTICLE 5

In addition to Article 6 of the Convention, it is stipulated that, with the reservation of officers whose detention might be important to the fate of arms and within the limits fixed by the second paragraph of that article, the wounded fallen into the hands of the enemy shall be sent back to their country, after they are cured, or sooner if possible, on condition, nevertheless, of not again bearing arms during the continuance of the war.

Articles concerning the marine

ARTICLE 6

The boats which, at their own risk and peril, during and after an engagement pick up the shipwrecked or wounded, or which having picked them up, convey them on board a neutral or hospital ship, shall enjoy, until the accomplishment of their mission, the character of neutrality, as far as the circumstances of the engagement and the position of the ships engaged will permit.

The appreciation of these circumstances is entrusted to the humanity of all the combatants. The wrecked and wounded thus picked up and saved must not serve again during the continuance of the war.

ARTICLE 7

The religious, medical, and hospital staff of any captured vessel are declared neutral, and, on leaving the ship, may remove the articles and surgical instruments which are their private property.

ARTICLE 8

The staff designated in the preceding article must continue to fulfil their functions in the captured ship, assisting in the removal of the wounded made by the victorious party; they will then be at liberty to return to their country, in conformity with the second paragraph of the first additional article.

The stipulations of the second additional article are applicable to the pay and allowance of the staff.

ARTICLE 9

The military hospital ships remain under martial law in all that concerns their stores; they become the property of the captor, but the latter must not divert them from their special appropriation during the continuance of the war.

ARTICLE 10

Any merchantman, to whatever nation she may belong, charged exclusively with removal of sick and wounded, is protected by neutrality, but the mere fact, noted on the ship's books, of the vessel having been visited by an enemy's cruiser, renders the sick and wounded incapable of serving during the continuance of the war. The cruiser shall even have the right of putting on board an officer in order to accompany the convoy, and thus verify the good faith of the operation.

If the merchant ship also carries a cargo, her neutrality will still protect it, provided that such cargo is not of a nature to be confiscated by the belligerents.

The belligerents retain the right to interdict neutralized vessels from all communication, and from any course which they may deem prejudicial to the secrecy of their operations. In urgent cases special conventions may be entered into between commanders in chief, in order to neutralize temporarily and in a special manner the vessels intended for the removal of the sick and wounded.

ARTICLE 11

Wounded or sick sailors and soldiers, when embarked, to whatever nation they may belong, shall be protected and taken care of by their captors.

Their return to their own country is subject to the provisions of Article 6 of the Convention, and of the additional Article 5.

ARTICLE 12

The distinctive flag to be used with the national flag, in order to indicate any vessel or boat which may claim the benefits of neutrality, in virtue of the principles of this Convention, is a white flag with a red cross. The belligerents may exercise in this respect any mode of verification which they may deem necessary.

Military hospital ships shall be distinguished by being painted white outside, with green strake.

ARTICLE 13

The hospital ships which are equipped at the expense of the aid societies, recognized by the Governments signing this Convention, and which are furnished with a commission emanating from the sovereign, who shall have given express authority for their being fitted out, and with a certificate from the proper naval authority that they have been placed under his control during their fitting out and on their final departure, and that they were then appropriated solely to the purpose of their mission, shall be considered neutral, as well as the whole of their staff. They shall be recognized and protected by the belligerents.

They shall make themselves known by hoisting, together with their national flag, the white flag with a red cross. The distinctive mark of their staff, while performing their duties, shall be an armlet of the same colours. The outer painting of these hospital ships shall be white, with red strake.

These ships shall bear aid and assistance to the wounded and wrecked belligerents, without distinction of nationality.

They must take care not to interfere in any way with the movements of the combatants. During and after the battle they must do their duty at their own risk and peril.

The belligerents shall have the right of controlling and visiting them ; they will be at

liberty to refuse their assistance, to order them to depart, and to detain them if the exigencies of the case require such a step.

The wounded and wrecked picked up by these ships cannot be reclaimed by either of the combatants, and they will be required not to serve during the continuance of the war.

ARTICLE 14

In naval wars any strong presumption that either belligerent takes advantage of the benefits of neutrality, with any other view than the interest of the sick and wounded, gives to the other belligerent, until proof to the contrary, the right of suspending the Convention, as regards such belligerent.

Should this presumption become a certainty, notice may be given to such belligerent that the Convention is suspended with regard to him during the whole continuance of the war.

ARTICLE 15

The present act shall be drawn up in a single original copy, which shall be deposited in the archives of the Swiss Confederation.

An authentic copy of this act shall be delivered, with an invitation to adhere to it, to each of the signatory Powers of the Convention of August 22, 1864, as well as to those that have successively acceded to it.

In faith whereof, the undersigned commissaries have drawn up the present project of additional articles and have apposed thereunto the seals of their arms.

Done at Geneva, October 20, 1868.

[Here follow signatures.]

Additional paragraph to Article 9

The vessels not equipped for fighting, which, during peace, the government shall have officially declared to be intended to serve as floating hospital ships, shall, however enjoy during the war complete neutrality, both as regards stores, and also as regards their staff, provided their equipment is exclusively appropriated to the special service on which they are employed.

4. THE DECLARATION OF ST. PETERSBURG [1]

Upon the invitation of the Imperial Cabinet of Russia, an International Military Commission having been assembled at St. Petersburg in order to consider the desirability of forbidding the use of certain projectiles in time of war among civilized nations, and this commission having fixed by a common accord the technical limits within which the necessities of war ought to yield to the demands of humanity, the undersigned have been authorized by the orders of their Governments to declare as follows :

Considering that the progress of civilization should have the effect of alleviating, as much as possible, the calamities of war ;

That the only legitimate object that States should endeavour to accomplish during war is to weaken the military force of the enemy ;

[1] Martens, *Nouveau recueil général de traités*, vol. 18, p. 474.

That for this purpose it is sufficient to disable the greatest possible number of men ;

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable ;

That the employment of such arms would, therefore, be contrary to the laws of humanity;

The contracting Parties engage, mutually, to renounce, in case of war among themselves, the employment, by their military or naval forces, of any projectile of less weight than four hundred grammes, which is explosive, or is charged with fulminating or inflammable substances.

They agree to invite all the States which have not taken part in the deliberations of the International Military Commission, assembled at St. Petersburg, by sending delegates thereto, to accede to the present engagement.

This engagement is obligatory only upon the contracting or acceding Parties thereto, in case of war between two or more of themselves ; it is not applicable with regard to non-contracting Parties, or Parties that shall not have acceded to it.

It will also cease to be obligatory from the moment when, in a war between contracting or acceding Parties, a non-contracting Party, or a non-acceding Party, shall join one of the belligerents.

The contracting or acceding Parties reserve to themselves the right to come to an understanding, hereafter, whenever a precise proposition shall be drawn up, in view of future improvements which may be effected in the armament of troops, in order to maintain the principles which they have established, and to reconcile the necessities of war with the laws of humanity.

Done at St. Petersburg, November 29/December 11, 1868.

[Here follow the signatures of the representatives of Austria, Bavaria, Belgium, Denmark, France, Great Britain, Greece, Italy, the Netherlands, Persia, Portugal, Prussia and the North German Confederation, Russia, Sweden and Norway, Switzerland, Turkey, and Wurttemberg.]

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5. THE CONFERENCE OF BRUSSELS OF 1874[1]

FINAL PROTOCOL

Meeting of August 27, 1874

The Conference assembled at Brussels, on the invitation of the Government of His Majesty the Emperor of Russia, for the purpose of discussing a project of international rules on the laws and usages of war, has examined the project submitted to it in a spirit in accordance with the elevated sentiment which had led to its being convoked, and which all the Governments represented had welcomed with sympathy.

This sentiment had already found expression in the declaration exchanged between the Governments at St. Petersburg in 1868 with reference to the exclusion of explosive bullets.

It had been unanimously declared that the progress of civilization should have the effect of alleviating, as far as possible, the calamities of war, and that the only legitimate object which States should have in view during war, is to weaken the enemy without inflicting upon him unnecessary suffering.

[1] *Actes de la Conférence de Bruxelles* (1874), p. 307. See also British Parliamentary Papers, Misc. No. 1 (1875), pp. 151 *et seq.*

These principles met, at that time, with unanimous approval. At the present time the Conference, following the same path, participates in the conviction expressed by the Government of His Majesty the Emperor of Russia, that a further step may be taken by revising the laws and general usages of war, whether with the object of defining them with greater precision, or with the view of laying down, by a common agreement, certain limits which will restrain, as far as possible, the severities of war.

War being thus regulated, would involve less suffering, would be less liable to those aggravations produced by uncertainty, unforeseen events, and the passions excited by the struggle ; it would tend more surely to that which should be its final object, viz., the re-establishment of good relations, and a more solid and lasting peace between the belligerent States.

The Conference could respond to those ideas of humanity in no better way than by entering in the same spirit into the examination of the subject they were to discuss. The modifications which have been introduced into the project, the comments, the reservations, and separate opinions which the delegates have thought proper to insert in the protocols, in accordance with instructions, and the particular views of their respective Governments, or their own private opinions, constitute the *ensemble* of their work. It is of opinion that it may be submitted to the respective Governments which it represents, as a conscientious enquiry of a nature to serve as a basis for an ulterior exchange of ideas, and for the development of the provisions of the Convention of Geneva of 1864, and of the Declaration of St. Petersburg of 1868. It will be their task to ascertain what portion of this work may become the object of an agreement, and what portion requires still further examination.

The Conference, in concluding its work, is of opinion that its debates will have, in every case, thrown light on those important questions, the regulation of which, should it result in a general agreement, would be a real progress of humanity.

[Here follow the signatures of the delegates of Russia, Germany, Austria-Hungary, Belgium, Denmark, Spain, France, Great Britain, Greece, Italy, the Netherlands, Portugal, Sweden and Norway, Switzerland, and Turkey.]

PROJECT OF AN INTERNATIONAL DECLARATION CONCERNING THE LAWS AND CUSTOMS OF WAR[1]

Military authority over the territory of the hostile State

ARTICLE 1

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised.

ARTICLE 2

The authority of the legitimate Power being suspended and having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety.

[1] *Actes de la Conférence de Bruxelles*, p. 297. Text as modified by the Conference.

ARTICLE 3

With this object he shall maintain the laws which were in force in the country in time of peace, and shall not modify, suspend or replace them unless necessary.

ARTICLE 4

The functionaries and officials of every class who, at the instance of the occupier, consent to continue to perform their duties, shall be under his protection. They shall not be dismissed or be liable to summary punishment unless they fail in fulfilling the obligations they have undertaken, and shall be handed over to justice, only if they violate those obligations by unfaithfulness.

ARTICLE 5

The army of occupation shall only collect the taxes, dues, duties and tolls imposed for the benefit of the State, or their equivalent, if it is impossible to collect them, and, as far as is possible, in accordance with the existing forms and practice. It shall devote them to defraying the expenses of the administration of the country to the same extent as the legitimate Government was so obligated.

ARTICLE 6

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for the operations of the war.

Railway plant, land telegraphs, steamers and other ships, apart from cases governed by maritime law, as well as depots of arms and generally all kinds of war material, although belonging to companies or to private persons, are likewise material which may serve for military operations and which cannot be left by the army of occupation at the disposal of the enemy. Railway plant, land telegraphs, as well as steamers and other ships above mentioned shall be restored and compensation fixed when peace is made.

ARTICLE 7

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

ARTICLE 8

The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property.

All seizure or destruction of, or wilful damage to, institutions of this character, historic monuments, works of art and science should be made the subject of legal proceedings by the competent authorities.

Who is to be recognized as a belligerent party—combatants and non-combatants

ARTICLE 9

The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions :

1. That they be commanded by a person responsible for his subordinates ;
2. That they have a fixed distinctive emblem recognizable at a distance ;
3. That they carry arms openly ; and
4. That they conduct their operations in accordance with the laws and customs of war.

In countries where militia constitute the army, or form part of it, they are included under the denomination ' army '.

ARTICLE 10

The population of a territory which has not been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 9, shall be regarded as belligerents if they respect the laws and customs of war.

ARTICLE 11

The armed forces of the belligerent parties may consist of combatants and non-combatants. In case of capture by the enemy, both shall enjoy the rights of prisoners of war.

Means of injuring the enemy

ARTICLE 12

The laws of war do not recognize in belligerents an unlimited power in the adoption of means of injuring the enemy.

ARTICLE 13

According to this principle are especially forbidden :

(*a*) Employment of poison or poisoned weapons ;

(*b*) Murder by treachery of individuals belonging to the hostile nation or army ;

(*c*) Murder of an enemy who, having laid down his arms or having no longer means of defence, has surrendered at discretion ;

(*d*) The declaration that no quarter will be given ;

(*e*) The employment of arms, projectiles or material calculated to cause unnecessary suffering, as well as the use of projectiles prohibited by the Declaration of St. Petersburg of 1868 ;

(*f*) Making improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention ;

(*g*) Any destruction or seizure of the enemy's property that is not imperatively demanded by the necessity of war.

ARTICLE 14

Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country (excepting the provisions of Article 36) are considered permissible.

Sieges and bombardments

ARTICLE 15

Fortified places are alone liable to be besieged. Open towns, agglomerations of dwellings, or villages that are not defended can neither be attacked nor bombarded.

ARTICLE 16

But if a town or fortress, agglomeration of dwellings or village, is defended, the officer in command of an attacking force must, before commencing a bombardment, except in assault, do all in his power to warn the authorities.

ARTICLE 17

In such cases all necessary steps must be taken to spare, as far as possible, buildings dedicated to art, science, or charitable purposes, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings by distinctive and visible signs to be communicated to the enemy beforehand.

ARTICLE 18

A town taken by assault ought not to be given over to pillage by the victorious troops.

Spies

ARTICLE 19

A person can only be considered a spy when, acting clandestinely or on false pretences, he obtains or endeavours to obtain information in the districts occupied by the enemy, with the intention of communicating it to the hostile party.

ARTICLE 20

A spy taken in the act shall be tried and treated according to the laws in force in the army which captures him.

ARTICLE 21

The spy who rejoins the army to which he belongs, and who is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts.

ARTICLE 22

Soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army, for the purpose of obtaining information, are not considered spies.

Similarly, the following should not be considered spies, if they are captured by the enemy : soldiers and also civilians, carrying out their mission openly, entrusted with the delivery of dispatches intended either for their own army or for the enemy's army.

To this class belong likewise, if they are captured, persons sent in balloons for the purpose of carrying dispatches and, generally, of maintaining communications between the different parts of an army or a territory.

Prisoners of war

ARTICLE 23

Prisoners of war are lawful and disarmed enemies.

They are in the power of the hostile Government, but not in that of the individuals or corps who captured them

They must be humanely treated.

Any act of insubordination justifies the adoption towards them of such measures of severity as may be necessary.

All their personal belongings except arms remain their property.

ARTICLE 24

Prisoners of war may be interned in a town, fortress, camp, or other place, under obligation not to go beyond certain fixed limits ; but they can only be placed in confinement as an indispensable measure of safety.

ARTICLE 25

Prisoners of war may be employed on certain public works which have no direct connexion with the operations in the theatre of war, and which are not excessive nor humiliating to their military rank, if they belong to the army, or to their official or social position, if they do not belong to it.

They may also, subject to such regulations as may be drawn up by the military authorities, undertake private work.

Their wages shall go towards improving their position or shall be paid to them on their release. In this case the cost of maintenance may be deducted from said wages.

ARTICLE 26

Prisoners of war cannot be compelled in any way to take any part whatever in carrying on the operations of the war.

ARTICLE 27

The Government into whose hands prisoners of war have fallen undertakes to provide for their maintenance.

The conditions of such maintenance may be settled by a reciprocal agreement between the belligerent parties.

In the absence of this agreement, and as a general principle, prisoners of war shall be treated as regards food and clothing, on the same footing as the troops of the Government which has captured them.

ARTICLE 28

Prisoners of war are subject to the laws and regulations in force in the army in whose power they are.

Arms may be used, after summoning, against a prisoner of war attempting to escape. If retaken he is liable to disciplinary punishment or subject to a stricter surveillance.

If, after succeeding in escaping, he is again taken prisoner, he is not liable to any punishment for his previous flight.

ARTICLE 29

Every prisoner of war is bound to give, if questioned on the subject, his true name and rank, and if he infringes this rule, he is liable to a curtailment of the advantages accorded to the prisoners of war of his class.

ARTICLE 30

The exchange of prisoners of war is regulated by mutual agreement between belligerents.

ARTICLE 31

Prisoners of war may be set at liberty on parole if the laws of their country allow it, and, in such cases, they are bound, on their personal honour, scrupulously to fulfil, both towards their own Government and the Government by which they were made prisoners, the engagements they have contracted

In such cases their own Government ought neither to require of nor accept from them any service incompatible with the parole given.

ARTICLE 32

A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile Government is not obliged to accede to the request of the prisoner to be set at liberty on parole.

ARTICLE 33

Any prisoner of war liberated on parole and retaken bearing arms against the Government to which he had pledged his honour, may be deprived of the rights accorded to prisoners of war, and brought before the courts.

ARTICLE 34

Individuals in the vicinity of armies, but not directly forming part of them, such as correspondents, newspaper reporters, sutlers, contractors, etc., etc., can also be made prisoners. These prisoners should, however, be in possession of a permit issued by the competent authority and of a certificate of identity.

The sick and wounded

ARTICLE 35

The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention of August 22, 1864, subject to any modifications which may be introduced into it.

The military power with regard to private persons

ARTICLE 36

The population of occupied territory cannot be forced to take part in the military operations against their own country.

ARTICLE 37

The population of occupied territory cannot be compelled to swear allegiance to the hostile Power.

ARTICLE 38

Family honour and rights, the lives and property of persons, as well as their religious convictions and their practice, must be respected.

Private property cannot be confiscated.

ARTICLE 39

Pillage is formally forbidden.

Contributions and requisitions

ARTICLE 40

As private property should be respected, the enemy shall demand from municipalities or inhabitants only payments and services in proportion to the necessities of war as generally recognized, in proportion to the resources of the country, and such as do not involve the population in the obligation of taking part in the operations of war against their country.

ARTICLE 41

The enemy, in collecting contributions, whether as an equivalent for taxes (see Article 5) or for payments which should be made in kind, or as fines, shall proceed, as far as possible, in accordance with the rules of assessment and incidence of the taxes in force in the occupied territory.

The civil authorities of the legitimate Government shall lend their assistance if they have remained in office.

Contributions can be imposed only on the order and responsibility of the general in chief or of the superior civil authority established by the enemy in the occupied territory.

For every contribution a receipt shall be given to the person furnishing it.

ARTICLE 42

Requisitions shall be made only on the authority of the commander in the locality occupied.

For every requisition an indemnity shall be granted or a receipt given.

Parlementaires

ARTICLE 43

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag, accompanied by a trumpeter (bugler or drummer) or also by a flag-bearer. He shall have a right to inviolability as well as the trumpeter (bugler or drummer) and the flag-bearer who accompany him.

ARTICLE 44

The commander to whom a parlementaire is sent is not in all cases and under all conditions obliged to receive him.

It is lawful for him to take all the necessary steps to prevent the parlementaire taking advantage of his stay within the radius of the enemy's position to the prejudice of the

latter, and if the parlementaire has rendered himself guilty of such an abuse of confidence, he has the right to detain him temporarily.

He may likewise declare beforehand that he will not receive parlementaires during a certain period. Parlementaires presenting themselves after such a notification, from the side to which it has been given, forfeit the right of inviolability.

ARTICLE 45

The parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treason.

Capitulations

ARTICLE 46

The conditions of capitulations are discussed between the contracting parties.

They must not be contrary to military honour.

Once settled by a convention, they must be scrupulously observed by both parties.

Armistices

ARTICLE 47

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice.

ARTICLE 48

An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere ; the second only between certain fractions of the belligerent armies and within a fixed radius.

ARTICLE 49

An armistice must be notified officially without delay to the competent authorities and to the troops. Hostilities are suspended immediately after the notification.

ARTICLE 50

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held between the populations.

ARTICLE 51

The violation of the armistice by one of the parties gives the other party the right of denouncing it.

ARTICLE 52

A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders and, if necessary, compensation for the losses sustained.

Belligerents interned and wounded tended in neutral countries

ARTICLE 53

A neutral State which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war.

It may keep them in camps, and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission.

ARTICLE 54

In the absence of a special convention, the neutral State shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good.

ARTICLE 55

A neutral State may authorize the passage across its territory of wounded or sick belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel nor material of war.

In such a case, the neutral State is bound to take whatever measures of safety and control are necessary for the purpose.

ARTICLE 56

The Geneva Convention applies to sick and wounded interned in neutral territory.

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6. PROJECT FOR AN INTERNATIONAL CONVENTION ON THE LAWS AND CUSTOMS OF WAR PRESENTED BY THE RUSSIAN GOVERNMENT [1]

GENERAL PRINCIPLES

§ 1. An international war is a state of open conflict between two independent States (acting alone or with allies), and between their armed and organized forces.

§ 2. Operations of war must be directed exclusively against the forces and the means of making war of the hostile State, and not against its subjects, so long as the latter do not themselves take any active part in the war.

§ 3. In order to attain the object of the war, all means and all measures in conformity with the laws and customs of war and justified by the necessities of war shall be permitted.

The laws and customs of war forbid not only useless cruelty and acts of barbarity committed against the enemy ; they furthermore require from the competent authorities the immediate punishment of those guilty of such acts, provided they have not been provoked by absolute necessity.

§ 4. The necessities of war cannot justify either treachery towards the enemy, or declaring him an outlaw, or the employment of violence and cruelty towards him.

§ 5. In the event of the enemy not observing the laws and customs of war, as laid down in the present Convention, the opposing force may resort to reprisals, but only as an inevitable evil, and without ever losing sight of the duties of humanity.

[1] *Actes de la Conférence de Bruxelles* (1874), p. 8.

SECTION I.—The Rights of Belligerents One towards the Other

Chapter I.—*Military authority over the hostile State*

§ 1. The occupation by the enemy of a part of the territory of a State with which he is at war, suspends, *ipso facto*, the authority of the legal power of the latter, and substitutes in its place the military authority of the occupying State.

§ 2. The enemy who occupies a district can, according to the requirements of the war and in the public interest, either maintain in full force the laws existing there in time of peace, modify them in part, or suspend them altogether.

§ 3. In accordance with the rights of war, the chief of the army of occupation may compel the departments, as well as the officers of the civil administration of police and of justice, to continue in the exercise of their duties under his superintendence and control.

§ 4. The military authority may require the local officials to undertake on oath, or on their word, to fulfil the duties required of them during the hostile occupation ; it may remove those who refuse to satisfy this requirement, and prosecute judicially those who shall not fulfil the duties undertaken by them.

§ 5. The army of occupation shall have the right to levy for its benefit against the inhabitants, all taxes, dues, duties, and tolls established by their legal Government.

§ 6. An army occupying a hostile country shall have the right to take possession of all funds belonging to the Government, of its depots and arms, of its means of transport, of its magazines and supplies, and, generally, of all Government property which may assist the objects of the war.

Note.—All railway rolling-stock, although belonging to private companies, as also depots of arms, and, generally, all kinds of munitions of war, although belonging to private individuals, shall be equally subject to seizure by the army of occupation.

§ 7. The use of public buildings, lands, forests, and agricultural works belonging to the hostile State, and which are found in the occupied country, shall pass in like manner into the possession of the army of occupation.

§ 8. The property of churches, charitable and educational establishments, of all institutions devoted to scientific or benevolent purposes, shall not be subject to seizure by the army of occupation. Every seizure or intentional destruction of such establishments, monuments, works of art, or scientific museums, shall be punished by the competent authorities.

Chapter II.—*Those who are to be recognized as belligerents ; combatants, non-combatants*

§ 9. The rights of belligerents shall not only be enjoyed by the army, but also by the militia and volunteers in the following cases :

1. If, having at their head a person responsible for his subordinates, they are at the same time subject to orders from headquarters.
2. If they wear some distinctive badge, recognizable at a distance ;
3. If they carry arms openly, and
4. If in their operations they conform to the laws, customs, and procedure of war.

Armed bands not complying with the above-mentioned conditions shall not possess the rights of belligerents ; they shall not be considered as regular enemies, and in case of capture shall be proceeded against judicially.

§ 10. The armed forces of belligerent States consist of combatants and non-combatants. The first take an active and direct part in warlike operations ; the second, though forming part of the army, belong to different branches of the military organization ; such as the religious and medical branches, the departments of administration and justice, and others attached to the army. In case of capture by the enemy, non-combatants shall enjoy equally with the first, the rights of prisoners of war ; doctors, the auxiliary *personnel* of the ambulances, and clergymen enjoy, moreover, the rights of neutrality. (See below, § 38.)

Chapter III.—*Means of injuring the enemy : those which are permitted or should be forbidden*

§ 11. The laws of warfare do not allow to belligerents an unlimited power as to the choice of means to be reciprocally employed.

§ 12. According to this principle are forbidden :

(*a*) The use of poisoned weapons, or the diffusion, by any means whatever, of poison in the enemy's territory ;

(*b*) Murder by treachery of individuals belonging to the hostile army ;

(*c*) Murder of an antagonist who has laid down his arms, or who has no longer the means of defending himself. As a rule, the hostile parties have no right to declare that they will not give quarter. Such an extreme measure is only admissible as a reprisal for previous acts of cruelty, or as an unavoidable step to prevent their own destruction. Armies that do not give quarter have no right to claim it for themselves.

(*d*) The threat of extermination towards a garrison which obstinately holds a fortress ;

(*e*) The use of arms occasioning uncalled-for suffering, or the employment of projectiles filled with powdered glass, or of substances calculated to inflict unnecessary pain ;

(*f*) The use of explosive balls of less than four hundred grammes weight, charged with inflammable substances.

§ 13. Amongst the means of warfare *which are permitted* are :

(*a*) Every operation of war by the army or by detached bodies, such as ambuscades, skirmishing, etc. ;

(*b*) The seizure or destruction of everything that is necessary to the enemy in order to carry on the war, or of that which may add to his strength ;

(*c*) The destruction of everything that hinders the success of warlike operations ;

(*d*) Every species of warlike *stratagem* ; but whoever makes use of the enemy's national flag, his military insignia, or his uniform with a view to deceive him, deprives himself thereby of the protection of the laws of war ;

(*e*) The employment of every available means of procuring information about the enemy and the country.

Chapter IV.—*Sieges and bombardments*

§ 14. Fortresses or fortified towns are alone liable to be besieged. An entirely open town, which is not defended by hostile troops, and whose inhabitants offer no armed resistance, *is free from attack or bombardment.*

§ 15. But if a town be defended by the enemy's troops, or by the armed inhabitants, the attacking army, before commencing the bombardment, should previously give notice thereof to the authorities of the town.

§ 16. The commander of a besieging army, when bombarding a fortified city, should take all the steps in his power to spare, as far as possible, churches and artistic buildings, as also those devoted to science and charity.

§ 17. A town taken by storm should not be given up to the victorious troops for plunder.

Chapter V.—*Spies*

§ 18. The individual who, acting independently of his military duties, secretly collects information in districts occupied by the enemy, with the intention of communicating it to the opposing force, is considered as a spy.

§ 19. A spy, if taken in the act, is to be handed over to justice, even though his intention may not have been definitely accomplished, or crowned with success.

§ 20. Any inhabitant of the country *occupied by the enemy communicating information to the opposing force*, is to be likewise handed over to justice.

§ 21. If a spy, who, after successfully performing his mission, rejoins the army to which he is attached, and is subsequently captured by the enemy, he is to be treated as a prisoner of war, and incurs no responsibility for his previous acts.

§ 22. Officers or soldiers who have penetrated within the limits of the sphere of operations of the enemy's army, with the intention of collecting information, are not considered as spies, if it has been possible to recognize their military character. In like manner, officers or soldiers (and also non-military persons performing their mission openly) charged with the transmission of despatches, whether written or verbal, from one part of the army to another, are not considered as spies if captured by the enemy.

Note.—To this class belong also individuals captured in balloons, who are charged with despatches, and generally with keeping up the communications between different parts of an army.

Chapter VI.—*Prisoners of war*

§ 23. All combatants and non-combatants, forming part of such armed forces of the belligerents, as are recognized by law (Chapter II, §§ 9 and 10), with the exception of those non-combatants enumerated hereafter (Chapter VII, § 38), are liable to be made prisoners of war.

§ 24. Persons who, though happening to be with an army, do not directly form part of it, as, for instance, correspondents, newspaper reporters, sutlers, contractors, etc., are liable to be made prisoners at the same time as that army.

§ 25. Prisoners of war are not criminals, but lawful enemies. They are in the power of the enemy's Government, but not of the individuals or of the corps who made them prisoners, and should not be subjected to any violence or ill-usage.

§ 26. Prisoners of war are liable to detention within some town, fortress, or district, under an obligation not to go beyond certain fixed limits, but they must not be subjected to confinement like criminals.

§ 27. Prisoners of war may be employed on certain public works, provided such employment be not excessive, or humiliating to the rank and social position which they occupy in their own country, and, moreover, have no immediate connexion with the operations of war undertaken against their country or its allies.

§ 28. Prisoners of war cannot be compelled to take any part whatever in the prosecution of military operations.

§ 29. The Government in whose power the prisoners of war happen to be, undertakes to provide for their maintenance. The conditions of the maintenance of prisoners of war are determined by a mutual understanding between the belligerents.

§ 30. A prisoner of war attempting to escape may lawfully be killed during the pursuit, but when once recaptured, or taken prisoner a second time, he is not liable to any punishment for his flight ; he may only be subjected to a stricter surveillance.

§ 31. Prisoners of war who have committed any offence during their captivity may be brought before the courts of justice and punished accordingly.

§ 32. Any conspiracy set on foot by prisoners of war, with a view to a general escape, or directed against the established authorities at the place where they are detained, is punishable according to military law.

§ 33. Every prisoner of war is bound in honour to declare his true rank, and in case of his infringing this rule, he incurs a curtailment of the rights granted to prisoners of war.

§ 34. The exchange of prisoners of war depends entirely upon the convenience of the belligerents, and all conditions of such exchange are settled by mutual agreement.

§ 35. Prisoners of war may be liberated on parole, if the laws of their country allow of it, and in such a case they are bound on their personal honour to fulfil scrupulously as regards their own Government as well as that which made them prisoners, the engagements which they have contracted.

§ 36. A prisoner of war cannot be compelled to pledge his word, and, similarly, a belligerent Government cannot be compelled to release prisoners on parole.

§ 37. Any prisoner of war released on parole and again captured bearing arms against the Government to which he had pledged his word, is to be deprived of the rights of a prisoner of war, and brought before the *military tribunals*.

Chapter VII.—*Non-combatants and wounded*

§ 38. Clergymen, physicians, apothecaries, and assistant surgeons, remaining with the wounded on the field of battle, as well as all actual attendants in military hospitals and field ambulances, cannot be made prisoners of war ; they enjoy the rights of neutrality, provided they take no active part in the operations of war.

§ 39. The sick and wounded who have fallen into the enemy's hands are considered as prisoners of war, and treated in accordance with the Convention of Geneva and the following additional articles.

§ 40. The neutrality of hospitals and ambulances ceases if the enemy use them for warlike purposes ; but the fact that they are protected by a picket or sentinels shall not deprive them of their neutrality ; the picket or sentinels, if captured, are alone held to be prisoners of war.

§ 41. Persons enjoying the rights of neutrality and who are reduced to the necessity *of using arms in self-defence*, do not thereby lose their rights as neutrals.

§ 42. Belligerents are bound to lend their assistance to neutral persons who have fallen into their power, in order to obtain for them the enjoyment of the maintenance assigned to them by their Government, and, in case of need, to supply them with funds as an advance on account of such maintenance.

§ 43. Wounded persons belonging to the enemy's forces, who, after recovery, are found incapable of taking an active part in the war, may be sent back to their own country. Wounded persons who do not come within this category may be retained as prisoners of war.

§ 44. Non-combatants, who enjoy the rights of neutrality, should carry a distinctive badge delivered to them by their Government, and, in addition, a certificate of identity.

SECTION II.—The Rights of Belligerents with Reference to Private Individuals

Chapter I.—*The military power with respect to private individuals*

§ 45. The inhabitants of a district not already occupied by the enemy, who shall take up arms in the defence of their country, ought to be regarded as belligerents, and if captured should be considered as prisoners of war.

§ 46. Individuals belonging to the population of a country, in which the enemy's power is already established, who shall rise in arms against them, may be handed over to justice, and are not regarded as prisoners of war.

§ 47. Individuals who at one time take part independently in the operations of war, and at another return to their pacific occupations, not fulfilling generally the conditions of §§ 9 and 10, do not enjoy the rights of belligerents, and are amenable, in case of capture, to military justice.

§ 48. So long as a province, occupied by the enemy, is not ceded to him by virtue of a treaty of peace, the inhabitants thereof cannot be forced either to take part in the operations of war against their legitimate Government, or in acts of such a nature as to further the prosecution of the objects of the war, to the detriment of their own country.

§ 49. The inhabitants of districts occupied by the enemy cannot be compelled to take the oath of perpetual fidelity to the hostile Power.

§ 50. The religious convictions, the honour, the life, and the property of the non-combatant portion of the population should be respected by the enemy's army.

§ 51. The troops should respect private property in the occupied territory, and in no case destroy it without pressing necessity.

Chapter II.—*Requisitions and contributions*

§ 52. The enemy may exact from the local population all the taxes, labour, and dues, both in money and in kind, to which the armies of the legal Government have a right.

§ 53. The army of occupation may exact from the local population all articles of provisions, clothing, boots, etc., necessary for its maintenance. In such a case the belligerent is bound, as far as possible, either to indemnify the persons giving up their property, or else to give them the customary receipts.

§ 54. The enemy may levy *money contributions* on the population of the country of which he is in possession, either in case of *absolute and inevitable necessity*, or by way of penalty; but, in the one case as well as in the other, only by virtue of a decision of the commander in chief, and care being taken besides to avoid ruining the population.

The sums of money levied on the population in the first case may be liable to restitution.

SECTION III.—Relations between Belligerents

Chapter I.—*Modes of communication and envoys*

§ 55. All communication between districts occupied by the belligerents ceases, and cannot be permitted except by the military authorities, to such extent as they may consider indispensable.

§ 56. The diplomatic and consular agents of neutral Powers have the right of demanding from the belligerent parties authority to quit, without hindrance, the theatre of the operations of war ; but, in case of absolute military necessity, the satisfaction of such demands may be postponed to a more opportune moment.

§ 57. Individuals authorized by one of the belligerents to confer with the other, on presenting themselves with a white flag, and accompanied by a trumpeter (bugler or drummer), shall be recognized as parlementaires, and shall have the right of personal security.

§ 58. The commander of the army to which a parlementaire is dispatched is not obliged to receive him under all circumstances and conditions. It is equally lawful for him to take all measures necessary for preventing the parlementaire from taking advantage of his stay within the radius of the enemy's positions to the prejudice of the latter.

§ 59. If the parlementaire presents himself in the enemy's lines during a battle and is wounded or killed, it shall not be considered as a violation of law.

§ 60. The parlementaire loses his right of inviolability if it be proved in a positive and irrefutable manner that he has taken advantage of his privileged position to collect information or to incite to treachery.

Chapter II.—*Capitulations*

§ 61. The conditions of capitulations depend upon an understanding between the contracting parties. When once settled by a convention they should be scrupulously observed by both sides.

Chapter III.—*Armistices*

§ 62. An armistice suspends warlike operations for a space of time fixed by mutual agreement between the belligerents. Should the space of time not be fixed, the belligerents may resume operations at any moment, provided, however, that proper warning be given to the enemy, in accordance with the conditions of the armistice.

§ 63. On the conclusion of an armistice, what each of the parties may do, and what he may not do, shall be precisely defined.

§ 64. An armistice may be general or local. The former suspends all warlike operations between the belligerents ; the latter suspends them only between certain portions of the belligerent armies, and within the limits of a specified district.

§ 65. An armistice comes into force from the moment of its being concluded. Hostilities cease immediately after its notification to the competent authorities.

§ 66. It rests with the contracting parties to define the conditions upon which communications may be allowed between the populations of occupied provinces. Should the convention contain no clauses on this subject, the state of war is considered as still existing.

§ 67. The violation of the clauses of an armistice by either one of the parties, releases

the other from the obligation of carrying them out, and warlike operations may be immediately resumed.

§ 68. The violation of the clauses of an armistice by private individuals, on their own personal initiative, only affords the right of demanding from the competent authorities the punishment of the guilty persons, or an indemnity for losses sustained.

SECTION IV.—Reprisals

§ 69. Reprisals are admissible in extreme cases only, due regard being paid, as far as shall be possible, to the laws of humanity when it shall have been unquestionably proved that the laws and customs of war have been violated by the enemy and that they have had recourse to measures condemned by the law of nations.

§ 70. The selection of the means and extent of reprisals should be proportionate to the degree of the infraction of the law committed by the enemy. Reprisals that are disproportionately severe are contrary to the rules of the law of nations.

§ 71. Reprisals shall be allowed only on the authority of the commander in chief, who shall likewise determine the degree of their severity and their duration.

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7. THE LAWS OF WAR ON LAND

Manual adopted by the Institute of International Law at its Session at Oxford in 1880 [1]

PART I.—General Principles

Article 1

The state of war does not admit of acts of violence, save between the armed forces of belligerent States.

Persons not forming part of a belligerent armed force should abstain from such acts.

This rule implies a distinction between the individuals who compose the 'armed force' of a State and its other *ressortissants*. A definition of the term 'armed force' is, therefore, necessary.

Article 2

The armed force of a State includes

1. The army properly so called, including the militia ;

2. The national guards, landsturm, free corps, and other bodies which fulfil the three following conditions :

(*a*) That they are under the direction of a responsible chief ;

(*b*) That they must have a uniform, or a fixed distinctive emblem recognizable at a distance, and worn by individuals composing such corps ;

(*c*) That they carry arms openly ;

3. The crews of men-of-war and other military boats ;

[1] *Tableau général de l'organisation, des travaux et du personnel de l'Institut de droit international*, 1893. pp. 169 *et seq.*

4. The inhabitants of non-occupied territory, who, on the approach of the enemy, take up arms spontaneously and openly to resist the invading troops, even if they have not had time to organize themselves.

ARTICLE 3

Every belligerent armed force is bound to conform to the laws of war.

The only legitimate end that States may have in war being to weaken the military strength of the enemy (*Declaration of St. Petersburg*, 1868).

ARTICLE 4

The laws of war do not recognize in belligerents an unlimited liberty as to the means of injuring the enemy.

They are to abstain especially from all needless severity, as well as from all perfidious, unjust, or tyrannical acts.

ARTICLE 5

Military conventions made between belligerents during the continuance of war, such as armistices and capitulations, must be scrupulously observed and respected.

ARTICLE 6

No invaded territory is regarded as conquered until the end of the war ; until that time the occupant exercises, in such territory, only a *de facto* power, essentially provisional in character.

PART II.—APPLICATION OF GENERAL PRINCIPLES

I.—HOSTILITIES

A.—RULES OF CONDUCT WITH REGARD TO INDIVIDUALS

(*a*) *Inoffensive populations*

The contest being carried on by 'armed forces' only (Article 1),

ARTICLE 7

It is forbidden to maltreat inoffensive populations.

(*b*) *Means of injuring the enemy*

As the struggle must be honourable (Article 4),

ARTICLE 8

It is forbidden :

(*a*) To make use of poison, in any form whatever ;

(*b*) To make treacherous attempts upon the life of an enemy ; as, for example, by keeping assassins in pay or by feigning to surrender ;

(*c*) To attack an enemy while concealing the distinctive signs of an armed force ;

(*d*) To make improper use of the national flag, military insignia or uniform of the enemy, of the flag of truce and of the protective signs prescribed by the *Geneva Convention* (Articles 17 and 40 below).

As needless severity should be avoided (Article 4).

ARTICLE 9

It is forbidden :

(*a*) To employ arms, projectiles, or materials of any kind calculated to cause superfluous suffering, or to aggravate wounds,—notably projectiles of less weight than four hundred grammes which are explosive or are charged with fulminating or inflammable substances (*Declaration of St. Petersburg*).

(*b*) To injure or kill an enemy who has surrendered at discretion or is disabled, and to declare in advance that quarter will not be given, even by those who do not ask it for themselves.

(*c*) *The sick and wounded, and the sanitary service*

The following provisions (Articles 10 to 18), drawn from the *Geneva Convention*, exempt the sick and wounded, and the personnel of the sanitary service, from many of the needless hardships to which they were formerly exposed :

ARTICLE 10

Wounded or sick soldiers should be brought in and cared for, to whatever nation they belong.

ARTICLE 11

Commanders in chief have power to deliver immediately to the enemy outposts hostile soldiers who have been wounded in an engagement, when circumstances permit and with the consent of both parties.

ARTICLE 12

Evacuations, together with the persons under whose direction they take place, shall be protected by neutrality.

ARTICLE 13

Persons employed in hospitals and ambulances—including the staff for superintendence, medical service, administration and transport of wounded, as well as the chaplains, and the members and agents of relief associations which are duly authorized to assist the regular sanitary staff,—are considered as neutral while so employed, and so long as there remain any wounded to bring in or to succour.

ARTICLE 14

The personnel designated in the preceding article should continue, after occupation by the enemy, to tend, according to their needs, the sick and wounded in the ambulance or hospital which it serves.

ARTICLE 15

When such personnel requests to withdraw, the commander of the occupying troops sets the time of departure, which however he can only delay for a short time in case of military necessity.

ARTICLE 16

Measures should be taken to assure, if possible, to neutralized persons who have fallen into the hands of the enemy, the enjoyment of fitting maintenance.

ARTICLE 17

The neutralized sanitary staff should wear a white arm-badge with a red cross, but the delivery thereof belongs exclusively to the military authority.

ARTICLE 18

The generals of the belligerent Powers should appeal to the humanity of the inhabitants, and should endeavour to induce them to assist the wounded, by pointing out to them the advantages that will result to themselves from so doing (Articles 36 and 59). They should regard as inviolable those who respond to this appeal.

(d) The dead

ARTICLE 19

It is forbidden to rob or mutilate the dead lying on the field of battle.

ARTICLE 20

The dead should never be buried until all articles on them which may serve to fix their identity, such as pocket-books, numbers, etc., shall have been collected.

The articles thus collected from the dead of the enemy are transmitted to its army or Government.

(e) Who may be made prisoners of war

ARTICLE 21

Individuals who form a part of the belligerent armed force, if they fall into the hands of the enemy, are to be treated as prisoners of war, in conformity with Articles 61 *et seq.*

The same rule applies to messengers openly carrying official dispatches, and to civil aeronauts charged with observing the enemy, or with the maintenance of communications between the various parts of the army or territory.

ARTICLE 22

Individuals who accompany an army, but who are not a part of the regular armed force of the State, such as correspondents, traders, sutlers, etc., and who fall into the hands of the enemy, may be detained for such length of time only as is warranted by strict military necessity.

(f) Spies

ARTICLE 23

Individuals captured as spies cannot demand to be treated as prisoners of war.

But

ARTICLE 24

Individuals may not be regarded as spies who, belonging to the armed force of either belligerent, have penetrated, without disguise, into the zone of operations of the enemy, —nor bearers of official dispatches, carrying out their mission openly, nor aeronauts (Article 21).

In order to avoid the abuses to which accusations of espionage too often give rise in war it is important to assert emphatically that

ARTICLE 25

No person charged with espionage shall be punished until the judicial authority shall have pronounced judgment.

Moreover, it is admitted that

ARTICLE 26

A spy who succeeds in quitting the territory occupied by the enemy incurs no responsibility for his previous acts, should he afterwards fall into the hands of that enemy.

(*g*) *Parlementaires*

ARTICLE 27

A person is regarded as a parlementaire and has a right to inviolability who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag.

ARTICLE 28

He may be accompanied by a bugler or a drummer, by a colour-bearer, and, if need be, by a guide and interpreter, who also are entitled to inviolability.

The necessity of this prerogative is evident. It is, moreover, frequently exercised in the interest of humanity.

But it must not be injurious to the adverse party. This is why

ARTICLE 29

The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

Besides,

ARTICLE 30

The commander who receives a parlementaire has a right to take all the necessary steps to prevent the presence of the enemy within his lines from being prejudicial to him.

The parlementaire and those who accompany him should behave fairly towards the enemy receiving them (Article 4).

ARTICLE 31

If a parlementaire abuse the trust reposed in him he may be temporarily detained, and, if it be proved that he has taken advantage of his privileged position to abet a treasonable act, he forfeits his right to inviolability.

B.—RULES OF CONDUCT WITH REGARD TO THINGS

(*a*) *Means of injuring—Bombardment*

Certain precautions are made necessary by the rule that a belligerent must abstain from useless severity (Article 4). In accordance with this principle

ARTICLE 32

It is forbidden :

(*a*) To pillage, even towns taken by assault;

(*b*) To destroy public or private property, if this destruction is not demanded by an imperative necessity of war ;

(*c*) To attack and to bombard undefended places.

If it is incontestable that belligerents have the right to resort to bombardment against fortresses and other places in which the enemy is entrenched, considerations of humanity require that this means of coercion be surrounded with certain modifying influences which will restrict as far as possible the effects to the hostile armed force and its means of defence. This is why

ARTICLE 33

The commander of an attacking force, save in cases of open assault, shall, before undertaking a bombardment, make every due effort to give notice thereof to the local authorities.

ARTICLE 34

In case of bombardment all necessary steps must be taken to spare, if it can be done, buildings dedicated to religion, art, science, and charitable purposes, hospitals and places where the sick and wounded are gathered on the condition that they are not being utilized at the time, directly or indirectly, for defence.

It is the duty of the besieged to indicate the presence of such buildings by visible signs notified to the assailant beforehand.

(*b*) *Sanitary matériel*

The arrangements for the relief of the wounded, which are made the subject of Articles 10 *et seq.*, would be inadequate were not sanitary establishments also granted special protection. Hence, in accordance with the *Geneva Convention*,

ARTICLE 35

Ambulances and hospitals for the use of armies are recognized as neutral and should, as such, be protected and respected by belligerents, so long as any sick or wounded are therein.

ARTICLE 36

The same rule applies to private buildings, or parts of buildings, in which sick or wounded are gathered and cared for.

Nevertheless,

ARTICLE 37

The neutrality of hospitals and ambulances ceases if they are guarded by a military force ; this does not preclude the presence of police guard.

ARTICLE 38

As the equipment of military hospitals remains subject to the laws of war, persons attached to such hospitals cannot, in withdrawing, carry away any articles but such as are their private property. Ambulances, on the contrary, retain all their equipment.

ARTICLE 39

In the circumstances referred to in the above paragraph, the term ' ambulance ' is applied to field hospitals and other temporary establishments which follow the troops on the field of battle to receive the sick and wounded.

ARTICLE 40

A distinctive and uniform flag is adopted for ambulances, hospitals, and evacuations. It bears a red cross on a white ground. It must always be accompanied by the national flag.

II.—OCCUPIED TERRITORY

A.—DEFINITION

ARTICLE 41

Territory is regarded as occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is alone in a position to maintain order there. The limits within which this state of affairs exists determine the extent and duration of the occupation.

B.—RULES OF CONDUCT WITH RESPECT TO PERSONS

In consideration of the new relations which arise from the provisional change of government (Article 6),

ARTICLE 42

It is the duty of the occupying military authority to inform the inhabitants, at the earliest practicable moment, of the powers that it exercises, as well as of the local extent of the occupation.

ARTICLE 43

The occupant should take all due and needful measures to restore and ensure public order and public safety.

To that end

ARTICLE 44

The occupant should maintain the laws which were in force in the country in time of peace, and should not modify, suspend, or replace them, unless necessary.

ARTICLE 45

The civil functionaries and employees of every class who consent to continue to perform their duties are under the protection of the occupant.

They may always be dismissed, and they always have the right to resign their places.

They should not be summarily punished unless they fail to fulfil obligations accepted by them, and should be handed over to justice only if they violate these obligations.

ARTICLE 46

In case of urgency, the occupant may demand the co-operation of the inhabitants, in order to provide for the necessities of local administration.

As occupation does not entail upon the inhabitants a change of nationality,

ARTICLE 47

The population of the invaded district cannot be compelled to swear allegiance to the hostile Power; but inhabitants who commit acts of hostility against the occupant are punishable (Article 1).

ARTICLE 48

The inhabitants of an occupied territory who do not submit to the orders of the occupant may be compelled to do so.

The occupant, however, cannot compel the inhabitants to assist him in his works of attack or defence, or to take part in military operations against their own country (Article 4).

Besides,

ARTICLE 49

Family honour and rights, the lives of individuals, as well as their religious convictions and practice, must be respected (Article 4).

C.—RULES OF CONDUCT WITH REGARD TO PROPERTY

(*a*) *Public property*

Although the occupant replaces the enemy State in the government of the invaded territory, his power is not absolute. So long as the fate of this territory remains in suspense—that is, until peace—the occupant is not free to dispose of what still belongs to the enemy and is not of use in military operation. Hence the following rules:

ARTICLE 50

The occupant can only take possession of cash, funds, and realizable or negotiable securities which are strictly the property of the State, depots of arms, supplies, and, in general, movable property of the State of such character as to be useful in military operations.

ARTICLE 51

Means of transportation (railways, boats, etc.), as well as land telegraphs and landing-cables, can only be appropriated to the use of the occupant. Their destruction is forbidden, unless it be demanded by military necessity. They are restored when peace is made in the condition in which they then are.

ARTICLE 52

The occupant can only act in the capacity of provisional administrator in respect to real property, such as buildings, forests, agricultural establishments, belonging to the enemy State (Article 6).

It must safeguard the capital of these properties and see to their maintenance.

ARTICLE 53

The property of municipalities, and that of institutions devoted to religion, charity, education, art, and science, cannot be seized.

All destruction or wilful damage to institutions of this character, historic monuments, archives, works of art, or science, is formally forbidden, save when urgently demanded by military necessity.

(*b*) *Private property*

If the powers of the occupant are limited with respect to the property of the enemy State, with greater reason are they limited with respect to the property of individuals.

ARTICLE 54

Private property, whether belonging to individuals or corporations, must be respected, and can be confiscated only under the limitations contained in the following articles.

ARTICLE 55

Means of transportation (railways, boats, etc.), telegraphs, depots of arms and munitions of war, although belonging to companies or to individuals, may be seized by the occupant, but must be restored, if possible, and compensation fixed when peace is made.

ARTICLE 56

Impositions in kind (requisitions) demanded from communes or inhabitants should be in proportion to the necessities of war as generally recognized, and in proportion to the resources of the country.

Requisitions can only be made on the authority of the commander in the locality occupied.

ARTICLE 57

The occupant may collect, in the way of dues and taxes, only those already established for the benefit of the State. He employs them to defray the expenses of administration of the country, to the extent in which the legitimate Government was bound.

ARTICLE 58

The occupant cannot collect extraordinary contributions of money, save as an equivalent for fines, or imposts not paid, or for payments not made in kind.

Contributions in money can be imposed only on the order and responsibility of the general in chief, or of the superior civil authority established in the occupied territory, as far as possible, in accordance with the rules of assessment and incidence of the taxes in force.

ARTICLE 59

In the apportionment of burdens relating to the quartering of troops and war contributions, account is taken of the charitable zeal displayed by the inhabitants in behalf of the wounded.

ARTICLE 60

Requisitioned articles, when they are not paid for in cash, and war contributions are evidenced by receipts. Measures should be taken to assure the *bona fide* character and regularity of these receipts.

III.—PRISONERS OF WAR

A.—Rules for Captivity

The confinement of prisoners of war is not in the nature of a penalty for crime (Article 21) : neither is it an act of vengeance. It is a temporary detention only, entirely without penal character.

In the following provisions, therefore, regard has been had to the consideration due to them as prisoners, and to the necessity of their secure detention.

Article 61

Prisoners of war are in the power of the hostile Government, but not in that of the individuals or corps who captured them.

Article 62

They are subject to the laws and regulations in force in the army of the enemy.

Article 63

They must be humanely treated.

Article 64

All their personal belongings, except arms, remain their property.

Article 65

Every prisoner is bound to give, if questioned on the subject, his true name and rank. Should he fail to do so, he may be deprived of all, or a part, of the advantages accorded to prisoners of his class.

Article 66

Prisoners may be interned in a town, a fortress, a camp, or other place, under obligation not to go beyond certain fixed limits ; but they may only be placed in confinement as an indispensable measure of safety.

Article 67

Any act of insubordination justifies the adoption towards them of such measure of severity as may be necessary.

Article 68

Arms may be used, after summoning, against a prisoner attempting to escape.

If he is recaptured before being able to rejoin his own army or to quit the territory of his captor, he is only liable to disciplinary punishment, or subject to a stricter surveillance.

But if, after succeeding in escaping, he is again captured, he is not liable to punishment for his previous flight.

If, however, the fugitive so recaptured or retaken has given his parole not to escape, he may be deprived of the rights of a prisoner of war.

Article 69

The Government into whose hands prisoners have fallen is charged with their maintenance.

In the absence of an agreement on this point between the belligerent parties, prisoners are treated, as regards food and clothing, on the same peace footing as the troops of the Government which captured them.

ARTICLE 70

Prisoners cannot be compelled in any manner to take any part whatever in the operations of war, nor compelled to give information about their country or their army.

ARTICLE 71

They may be employed on public works which have no direct connexion with the operations in the theatre of war, which are not excessive and are not humiliating either to their military rank, if they belong to the army, or to their official or social position, if they do not form part thereof.

ARTICLE 72

In case of their being authorized to engage in private industries, their pay for such services may be collected by the authority in charge of them. The sums so received may be employed in bettering their condition, or may be paid to them on their release, subject to deduction, if that course be deemed expedient, of the expense of their maintenance.

B.—TERMINATION OF CAPTIVITY

The reasons justifying detention of the captured enemy exist only during the continuance of the war.

ARTICLE 73

The captivity of prisoners of war ceases, as a matter of right, at the conclusion of peace ; but their liberation is then regulated by agreement between the belligerents.

Before that time, and by virtue of the *Geneva Convention*,

ARTICLE 74

It also ceases as of right for wounded or sick prisoners who, after being cured, are found to be unfit for further military service.

The captor should then send them back to their country.

During the war

ARTICLE 75

Prisoners of war may be released in accordance with a cartel of exchange, agreed upon by the belligerent parties.

Even without exchange

ARTICLE 76

Prisoners may be set at liberty on parole, if the laws of their country do not forbid it.

In this case they are bound, on their personal honour, scrupulously to fulfil the engagements which they have freely contracted, and which should be clearly specified. On its part, their own Government should not demand or accept from them any service incompatible with the parole given.

ARTICLE 77

A prisoner cannot be compelled to accept his liberty on parole. Similarly, the hostile Government is not obliged to accede to the request of a prisoner to be set at liberty on parole.

ARTICLE 78

Any prisoner liberated on parole and recaptured bearing arms against the Government to which he had given such parole may be deprived of his rights as a prisoner of war, unless since his liberation he has been included in an unconditional exchange of prisoners.

IV.—PERSONS INTERNED IN NEUTRAL TERRITORY

It is universally admitted that a neutral State cannot, without compromising its neutrality, lend aid to either belligerent, or permit them to make use of its territory. On the other hand, considerations of humanity dictate that asylum should not be refused to individuals who take refuge in neutral territory to escape death or captivity. Hence the following provisions, calculated to reconcile the opposing interests involved.

ARTICLE 79

A neutral State on whose territory troops or individuals belonging to the armed forces of the belligerents take refuge should intern them, as far as possible, at a distance from the theatre of war.

It should do the same towards those who make use of its territory for military operations or services.

ARTICLE 80

The interned may be kept in camps or even confined in fortresses or other places.

The neutral State decides whether officers can be left at liberty on parole by taking an engagement not to leave the neutral territory without permission.

ARTICLE 81

In the absence of a special convention concerning the maintenance of the interned, the neutral State supplies them with the food, clothing, and relief required by humanity.

It also takes care of the *matériel* brought in by the interned.

When peace has been concluded, or sooner if possible, the expenses caused by the internment are repaid to the neutral State by the belligerent State to which the interned belong.

ARTICLE 82

The provisions of the *Geneva Convention* of August 22, 1864 (Articles 10–18, 35–40, 59, and 74, above given), are applicable to the sanitary staff, as well as to the sick and wounded, who take refuge in, or are conveyed to, neutral territory.

In particular,

ARTICLE 83

Evacuations of wounded and sick not prisoners may pass through neutral territory, provided the personnel and material accompanying them are exclusively sanitary. The neutral State through whose territory these evacuations are made is bound to take whatever measures of safety and control are necessary to secure the strict observance of the above conditions.

PART III.—Penal Sanction

If any of the foregoing rules be violated, the offending parties should be punished, after a judicial hearing, by the belligerent in whose hands they are. Therefore

Article 84

Offenders against the laws of war are liable to the punishments specified in the penal law.

This mode of repression, however, is only applicable when the person of the offender can be secured. In the contrary case, the criminal law is powerless, and, if the injured party deem the misdeed so serious in character as to make it necessary to recall the enemy to a respect for law, no other recourse than a resort to reprisals remains.

Reprisals are an exception to the general rule of equity, that an innocent person ought not to suffer for the guilty. They are also at variance with the rule that each belligerent should conform to the rules of war, without reciprocity on the part of the enemy. This necessary rigour, however, is modified to some extent by the following restrictions :

Article 85

Reprisals are formally prohibited in case the injury complained of has been repaired.

Article 86

In grave cases in which reprisals appear to be absolutely necessary, their nature and scope shall never exceed the measure of the infraction of the laws of war committed by the enemy.

They can only be resorted to with the authorization of the commander in chief.

They must conform in all cases to the laws of humanity and morality.

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8. RULES ON THE BOMBARDMENT OF OPEN TOWNS BY NAVAL FORCES ADOPTED BY THE INSTITUTE OF INTERNATIONAL LAW AT ITS SESSION IN VENICE, SEPTEMBER 29, 1896 [1]

Article 1

There is no difference between the rules of the law of war regarding bombardment by military land forces and by naval forces.

Article 2

Consequently the general principles laid down in Article 32 of the *Manual of the Institute* are applicable to the latter ; that is to say, that it is forbidden : (*a*) to destroy public or private property if this destruction is not demanded by an imperative necessity of war ; (*b*) to attack and to bombard places that are not defended.

Article 3

The rules laid down in Articles 33 and 34 of the *Manual* are equally applicable to naval bombardments.

[1] *Annuaire de l'Institut de droit international*, vol. 15, p. 313.

ARTICLE 4

In virtue of the general principles above, the bombardment by a naval force of an open town, that is to say, one which is not defended by fortifications or by other means of attack or of resistance for immediate defence, or by detached forts situated near by, for example, at a maximum distance of from four to ten kilometres, is inadmissible except in the following cases :

1. For the purpose of obtaining by requisitions or contributions what is necessary for the fleet.

These requisitions or contributions must not exceed the limits prescribed by Articles 56 and 58 of the *Manual of the Institute.*

2. For the purpose of destroying dockyards, military establishments, depots of war munitions, or war vessels in a port.

Further, an open town which defends itself against the entrance of troops or of marines that have been landed may be bombarded for the purpose of covering the disembarkation of the soldiers and the marines, if the open town attempts to prevent it, and, as an auxiliary measure of war, to facilitate the assault made by the troops and marines that have been landed, if the town defends itself.

Bombardments of which the object is only to exact a ransom are specially forbidden, and, *a fortiori,* those which are intended only to bring about the submission of the country by the destruction, without other reason, of the peaceful inhabitants or their property.

ARTICLE 5

An open town cannot be exposed to a bombardment for the mere reason :

1. That it is the capital of a State or the seat of the Government (but naturally these circumstances do not guarantee it in any way against a bombardment).

2. That it is at the time occupied by troops, or that it is ordinarily the garrison of troops of different arms intended to join the army in time of war.

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9. DECLARATIONS OF FRANCE AND ENGLAND CONCERNING THE ADDITIONAL ARTICLES TO THE GENEVA CONVENTION

BERNE, *May* 18, 1898.

MR. MINISTER,

In 1868 the signatory States of the Geneva Convention of August 22, 1864, relative to the improvement of the condition of the wounded, had already recognized the necessity of extending the principles of that Convention to naval wars. An international conference in session at Geneva from October 5 to October 20, 1868, adopted a project of fourteen articles additional to the Geneva Convention of which five defined certain dispositions of that Convention and nine deal with the marine.

These additional articles, not having received diplomatic sanction, remained a mere project. Nevertheless, Germany and France consented to apply them in 1870 as the *modus vivendi* during the hostilities. By the circular note of July 22, 1870, the Federal Council informed the Governments of the States that were parties to the Geneva Convention of the agreement between the North German Confederation and France.

As a war has now broken out between the United States of America and Spain having the sea as its principal theatre, we gave our attention to the very serious inconveniences that might result from the absence of agreement between the belligerent parties with regard to aid and assistance to be given the sick, wounded, and shipwrecked. We therefore did not hesitate to approach the Madrid and Washington Cabinets on April 23, in order that they might consent to put into force during hostilities, at least as the *modus vivendi*, the additional articles of October 20, 1868, as modified on the request of France (Article 9) and interpreted by France and Great Britain (Article 10). The note next had will inform your Excellency in what these modifications and interpretations consist.

The two Governments, appreciating the sentiments guiding us in our step, hastened to consent to our proposal and in consequence to address instructions to the commanders of the land and naval forces.

In bringing this matter to the knowledge of the signatory States of the Geneva Convention, we express the most ardent hope that the duration of hostilities will be as short as possible, and that the act of Geneva of October 28, 1868, voluntarily adopted by the belligerents may contribute to soften the conflicts of the war.

Be pleased to accept, Mr. Minister, the assurance of my high consideration.

In the name of the Swiss Federal Council,

The President of the Confederation
RUFFY
The Chancellor of the Confederation
RINGIER

[Here follow the articles additional to the Convention of Geneva.]

By note of October 23/November 30, 1868, the Swiss Federal Council informed the signatory States to the Convention of 1864 of the results of the Geneva Conference.

The French Government on December 11, 1868, while declaring itself ready to adhere to the additional articles, expressed the desire that Article 9 be modified.

The note of the French Ambassador to the Swiss Federal Council was worded as follows :

> The examination of the draft articles additional to the Convention of Geneva prepared by the International Conference which met in that city in October last has suggested to the Government of the Emperor some observances which I am charged to communicate to the Federal Council.
>
> Additional Article 9 of this draft proposes to stipulate that military hospital ships shall remain subject to the laws of war as regards their equipment, and that they shall become the property of the captor, on the condition however that the latter cannot divert them from their special mission during the continuance of the war. The Minister of the Navy of the Empire thought that this provision would be departing from the spirit of the Convention of 1864, by depriving naval forces in all cases of the privilege of having themselves accompanied by hospital ships enjoying the benefits of neutrality. Accordingly, while maintaining the wording of Article 9, he proposed to supplement this article by means of an additional article thus worded :
>
> > However, ships unfit for combat and which have been officially declared by the Governments during peace to be intended for service as floating maritime hospitals shall, during the war, enjoy complete neutrality in regard to both equipment and crew, provided their armament is solely adapted to their special mission.

The Imperial Government, which is ready to adhere to all the other stipulations proposed by the international commission, does not doubt that the original thought of the Conference will meet with unanimous assent and it has instigated me to ask the Federal Council to be pleased to submit Article 9 of the additional draft thus modified for the approval of the Powers that signed the 1864 Convention at the same time that it invites their accession to the entire draft.

As to the form in which these new provisions should be sanctioned, the French delegates to the Geneva Conference have already made known the opinion of His Imperial Majesty's Government on this point, which is in accordance with diplomatic usage. There is no question that additional articles to an international convention can be concluded only with the assent of all the contracting Powers, whether they have signed the principal convention or have later adhered to it ; the project drawn up by the Geneva Conference will therefore have effect only if it receives the signatures of the plenipotentiaries of all the States obligated by the act of 1864. I also, under instructions that I have received on this point, hasten to send your Excellency the annexed model of the definitive instrument of this additional arrangement, which it may be agreeable to the Federal Council to have at its disposal. As soon as all the contracting States are ready to subscribe to the proposals presented for their sanction, I shall be greatly obliged if you will kindly inform me thereof.

Please accept, Mr. President, the assurances of my great consideration.

DE COMMINGES-GUITAUD

England, on its side, had some scruples concerning the provisions of Article 10 relative to merchant vessels carrying cargo, and the following notes on this subject were exchanged between the British Government and the Ambassador of France at London.

No. 1

The Earl of Clarendon to the Prince de la Tour D'Auvergne[1]

FOREIGN OFFICE, *January* 21, 1869.

MR. AMBASSADOR:

Her Majesty's Government have taken into consideration your Excellency's note of the 15th ultimo, in which, with reference to the draft of articles prepared by the conference which met at Geneva in the month of October last, and intended as additional articles to the Convention of 1864, for the amelioration of the treatment of the wounded in time of war, your Excellency states that the Government of the Emperor is desirous of adding a paragraph, in the terms set forth in your note, to the ninth of those articles relating to hospital ships.

I have the honour to acquaint your Excellency that the paragraph in question appears to Her Majesty's Government to be unobjectionable.

But, before signifying their approval of the additional articles, Her Majesty's Government would be glad to ascertain what is the precise interpretation which the Government of the Emperor proposes to give to the following provision in the tenth of those articles : ' If the merchant ship also carries a cargo, her neutrality will still protect it, provided that such cargo is not of a nature to be confiscated by the belligerent.'

Under the existing practice of nations, if a ship under a *cartel* has entered the port of an enemy for the purpose of exchanging prisoners, or it may be for the purpose of bringing

[1] Martens, *Nouveau recueil général de traités*, vol. 18, p. 621.

away sick and wounded, the master would be bound to abstain from all traffic whatever, and any infringement of this rule would work a confiscation of the ship, if captured. Under one interpretation of the passage above recited, the provision would have a limited operation, and its intention might be held to be, to exempt vessels employed in ' removals ' from capture and confiscation, although the master might have availed himself of the opportunity to bring out cargo, provided the cargo was not contraband of war. The words ' her neutrality will still protect it ' on this hypothesis would mean, that neutrality would still cover *it*, that is, *the vessel.*

Under another interpretation the passage might be held to give protection to the *cargo* as well as to the *vessel* ; and if it should be so intended, then enemy's goods on board an enemy's ship might be privileged from capture as prize, provided only some sick and wounded persons were on board the vessel. With regard to the proviso, Her Majesty's Government apprehend that the words ' provided that such cargo is not of a nature to be confiscated by the belligerent ', must be taken to refer to the quality of the goods, as contraband of war or not, and not to their ownership.

There is another point as regards this article, which may deserve consideration, namely, under what limitations are ' removals ' of the wounded and sick to be made ? For instance, as regards evacuations made by sea, is it intended in the case of a blockaded town, that a vessel may come out of the port with sick and wounded, and be privileged from capture ? It might be desirable, in the interests of humanity, that they should be removed ; but under such circumstances their removal would tend to prolong the resistance of the besieged party.

In offering these observations, I am aware that it is possible that I may not have fully appreciated the use of the term ' removal '. But I presume it to mean the removal of the sick and wounded from temporary or permanent hospitals, at the discretion of either belligerent.

I request that your Excellency will have the goodness to communicate this note to the Government of the Emperor, and to state that Her Majesty's Government will feel greatly obliged by being made acquainted with their views upon the subject.

I am, etc.,

CLARENDON

No. 2

Prince de la Tour D'Auvergne to Count Clarendon[1]

LONDON, *February* 26, 1869.

MR. COUNT,

Upon informing me, on January 21 last, of the acceptance by the Queen's Government of the modifications proposed by Admiral Rigault de Genouilly for introduction into Article 9 additional to the Convention of August 22, 1864, for the relief of wounded soldiers, your Excellency expressed to me a desire to obtain some explanations on the exact meaning which the Emperor's Government intended to attach to certain provisions of additional Article 10.

[1] Martens, *Nouveau recueil général*, vol. 18, p. 623. This interpretation of additional Article 10 of October 20, 1868, was approved by all the signatory States of the 1864 Convention with the exception of the former Papal States.
Prince de la Tour d'Auvergne, Minister of Foreign Affairs under Napoleon III.

I have just received the enclosed explanatory note from my Government, and I hasten to transmit it to your Excellency. From this note it is seen that it was not the purpose of the stipulations of the Geneva Convention to modify generally accepted principles in the least as regards the rights of belligerents. It is therefore understood, as far as the Emperor's Government is concerned, that no vessel carrying sick or wounded and having contraband of war or hostile goods on board will be allowed to invoke the benefit of neutrality. As to the last paragraph of additional Article 10, it merely gives a besieged party the privilege of entering into conference with the besieging party with a view to the evacuation of the blockaded port ; that is, a vessel whose special mission is to transport sick and wounded will only be allowed to enter or leave by virtue of a previous agreement between the belligerents.

The Marquis de Lavalette, in instructing me to communicate the foregoing to your Excellency, expresses the hope that you will accept the interpretation adopted by the Emperor's Government.

I am, etc.

PRINCE DE LA TOUR D'AUVERGNE

[Enclosure]

Note touching the Interpretation of Article 10 *additional to the Convention of Geneva*

The second paragraph of the additional Article 10 reads thus : ' If the merchant ship also carries a cargo, her neutrality will still protect it, provided that such cargo is not of a nature to be confiscated by the belligerent.'

The words ' of a nature to be confiscated by the belligerent ' apply equally to the nationality of the merchandise and to its quality.

Thus, according to the latest international conventions, the merchandise of a nature to be confiscated by a cruiser are :

First. Contraband of war under whatever flag.

Second. Enemy merchandise under enemy flag.

The cruiser need not recognize the neutrality of the vessel carrying wounded if any part of its cargo shall, under international law, be comprised in either of these two categories of goods.

The faculty given by the paragraph in question to leave on board of vessels carrying wounded a portion of the cargo is to be considered as a facility for the carriage of freight, as well as a valuable privilege in favour of the navigability of merchant vessels if they be bad sailers when only in ballast ; but this faculty can in no wise prejudice the right of confiscation of the cargo within the limits fixed by international law.

Every ship the cargo of which would be subject to confiscation by the cruiser under ordinary circumstances is not susceptible of being covered by neutrality by the sole fact of carrying in addition sick or wounded men. The ship and the cargo would then come under the common law of war, which has not been modified by the Convention except in favour of the vessel exclusively laden with wounded men, or the cargo of which would not be subject to confiscation in any case. Thus, for example, the merchant ship of a belligerent laden with neutral merchandise and at the same time carrying sick and wounded is covered by neutrality.

The merchant ship of a belligerent carrying, besides wounded and sick men, goods of

the enemy of the cruiser's nation or contraband of war is not neutral, and the ship, as well as the cargo, comes under the common law of war.

A neutral ship carrying, in addition to wounded and sick men of the belligerent, contraband of war also is subject to the common law of war.

A neutral ship carrying goods of any nationality, but not contraband of war, lends its own neutrality to the wounded and sick which it may carry.

In so far as concerns the usage which expressly prohibits a cartel ship from engaging in any commerce whatsoever at the point of arrival, it is deemed that there is no occasion to specially subject to that inhibition vessels carrying wounded men, because the second paragraph of Article 10 imposes upon the belligerents, equally as upon neutrals, the exclusion of the transportation of merchandise subject to confiscation.

Moreover, if one of the belligerents should abuse the privilege which is accorded to him, and under the pretext of transporting the wounded should neutralize under its flag an important commercial intercourse which might in a notorious manner influence the chances or the duration of the war, Article 14 of the Convention could justly be invoked by the other belligerent.

As for the second point of the note of the British Government, relative to the privilege of effectively removing from a city, besieged and blockaded by sea, under the cover of neutrality, vessels bearing wounded and sick men, in such a way as to prolong the resistance of the besieged, the convention does not authorize this privilege. In according the benefits of a neutral status of a specifically limited neutrality to vessels carrying wounded, the Convention could not give them rights superior to those of other neutrals who cannot pass an effective blockade without special authorization. Humanity, however, in such a case, does not lose all its rights, and, if circumstances permit the besieging party to relax the rigorous rights of the blockade, the besieged party may make propositions to that end in virtue of the fourth paragraph of Article 10.

All the States that signed the Geneva Convention adhered to the additional articles, as well as to the modification of Article 9 proposed by France and the interpretation given to Article 10 by England and France.

Under date of April 21, 1870, the Legation of Russia in Switzerland addressed the following note to the Swiss Federal Council :

GENEVA, *April* 9/21, 1870.

Supplementing his note of March 20/April 1, the undersigned, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the Emperor of All the Russias, has the honour to communicate to the High Federal Council the following provisions of the Imperial Ministry of the Navy adopting the modifications which in its opinion, it would be desirable to see introduced in Additional Article 12 of the Geneva Convention.

Although Additional Article 14 indicated what would have to be done in case one of the belligerents abuses the distinctive flag of neutrality, there is not found in the whole Convention a single article for preventing such an abuse. However, a case may happen where the wrongful use of a State flag would have an influence upon the issue of the combat and then it would evidently be too late to apply the measures contained in Article 14.

This consideration appeared to the Ministry of the Navy sufficiently important to warrant substituting for the second paragraph of Article 12 reading thus: 'The belligerents may exercise in this respect any mode of verification which they may deem necessary' the following wording: 'With the exception of hospital ships which are distinguished by their special external painting, no war or merchant vessel shall be allowed to use the white flag with the red cross except in case it has received authority to do so in consequence of a previous understanding by the belligerents. In the absence of such an understanding, the benefit of neutrality shall be granted only to those of the vessels whose neutral flag, as established for hospital ships, has been hoisted before they were perceived by the enemy.'

The Imperial Ministry of the Navy expresses the opinion that the modification proposed by it relates to too serious a subject not to merit on the part of contracting parties the same attention which they granted to the modifications proposed by France and England to the same Convention.

The undersigned improves this occasion to renew to his Excellency Mr. Dubs the assurances of his great consideration.

GIERS

This proposal was not accepted by all the States.

The additional articles not having received diplomatic sanction, remained in the status of a project. Nevertheless Germany and France consented in 1870 to adopt them, as a *modus vivendi*, and to recommend their application to the commanders of their land and sea forces throughout the duration of hostilities.

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10. DRAFT REVISION OF THE GENEVA CONVENTION BY MR. MOYNIER[1]

PART I.—RULES COMMON TO WARS ON LAND AND ON SEA

ARTICLE 1

(Cf. Convention, Article 6.) Wounded, sick, or shipwrecked soldiers and sailors shall be respected, brought in and taken care of, to whatever nation they may belong.

ARTICLE 2

(Cf. Convention, Article 6 and Additional Article 5.) The captured wounded and sick shall be sent back to their country after their wounds are healed or sooner if possible, provided they are incapable of further service.

ARTICLE 3

The identification of the wounded, sick, shipwrecked and dead shall be made with care by means of an individual mark of identification adopted by each State for its soldiers and sailors and notified by it to the other contracting States.

[1] Gustave Moynier, *La revision de la Convention de Genève. Étude historique et critique suivie d'un Projet de Convention revisée* (Geneva, 1898), p. 47.
Gustave Moynier (1829–1910) was first President of the International Committee of the Red Cross.

ARTICLE 4

Each belligerent shall send to its adversary, as soon as possible after every fight, a list of names of the prisoners, wounded and dead that have come into its hands.

ARTICLE 5

(Cf Convention, Articles 2 and 39.) The individuals attached to the military medical service shall be considered as neutral and inviolable wherever they may be found. Nevertheless it shall not be permitted them to penetrate into the enemy lines nor to leave besieged or blockaded places without special authorization.

ARTICLE 6

(Cf. Convention, Article 2.) The personnel referred to in Article 5 above includes: physicians and their assistants, the administrative personnel of sanitary establishments, that of the service of sanitary transports, and that of religious aid as well as the members or agents of civil aid societies placed under military authority.

ARTICLE 7

(Cf. Convention, Article 7.) The individuals mentioned in Article 6 shall wear a white arm badge with a red cross, to be furnished by the military or naval authorities of one or other belligerent.

This arm badge shall be accompanied with a certificate when it is given to persons not belonging to the army.

ARTICLE 8

Those who wear the red cross arm badge lose their right to neutrality if they commit hostile acts. Nevertheless, the use that they may make of their arms for self-defence will not deprive them of this right.

PART II.—SPECIAL RULES FOR WARS ON LAND

CHAPTER I.—*Combatants*

ARTICLE 9

Disabled soldiers shall be protected against all violence and pillage or other ill-treatment.

ARTICLE 10

(Cf. Convention, Article 6.) Convoys of wounded and sick shall enjoy the benefits of neutrality both as respects their personnel and their equipment.

Nevertheless they cannot leave a besieged or blockaded place without the authorization of the enemy.

ARTICLE 11

The neutral State through whose territory convoys of evacuation are obliged to pass must allow them to pass freely after having seen that their character is exclusively sanitary.

ARTICLE 12

The burial shall, so far as possible, be preceded by a careful examination of the corpses to establish the fact of death.

CHAPTER II.—*The Sanitary service*

Section I.—The Personnel

ARTICLE 13

(Cf. Convention, Article 3 and Additional Article 1.) The individuals mentioned in Article 6 shall continue, even though the place where they are working be occupied by the enemy, to give their attention to the patients of the ambulance or hospital that they are serving.

ARTICLE 14

(Cf. Additional Article 2.) In the case provided in Article 13 the sanitary staff remaining at its post shall be placed under the orders of the enemy, which must treat it with respect and provide both for its subsistence and its pay according to the rates in force for its own troops.

ARTICLE 15

(Cf. Convention, Article 3 and Additional Article 1.) The persons placed under the orders of the enemy in virtue of Article 14 shall themselves ask to withdraw when they think their presence no longer necessary.

The commander of the troops of occupation shall then fix the moment of their departure, which he shall not delay more than a short time.

Section II.—The Equipment

ARTICLE 16

All local establishments and articles for the use of the sanitary service shall be protected and respected by the belligerents.

ARTICLE 17

(Cf. Convention, Article 4 and Additional Article 3.) The following cannot be made part of the booty of the enemy :

(*a*) Temporary establishments intended to follow troops on the battle-fields to receive the wounded and sick there, including the field hospitals ;

(*b*) *Matériel* of places for dressing wounds ;

(*c*) *Matériel* of convoys of wounded and sick as well as vehicles of every kind used for the sanitary service ;

(*d*) Depots of sanitary *matériel* ;

(*e*) Articles belonging personally to neutralized individuals ;

(*f*) *Matériel* of every kind belonging to civil sanitary aid societies.

ARTICLE 18

(Cf. Convention, Article 4.) If *matériel* belonging to one of the classes enumerated in Article 17 constitute the equipment of a sanitary staff working under the orders of the enemy—in virtue of Article 13—this staff has the right to remove it on withdrawing.

ARTICLE 19

(Cf. Convention, Articles 1 and 4.) The personal property and buildings of stationary military hospitals belonging to the State shall remain subject to the laws of war, but cannot be diverted from their purpose so long as they are necessary for the wounded and sick soldiers found there.

ARTICLE 20

(Cf. Convention, Article 7.) A white flag with a red cross accompanied by the national flag shall be flown, by order of the head of the service, on every establishment or place to which the protective provision of Article 16 is applicable.

The other objects referred to in Article 16 shall be marked with a white escutcheon with a red cross, and the national arms.

ARTICLE 21

(Cf. Convention, Articles 1 and 6.) The protection and respect guaranteed by Article 16 to sanitary *matériel* would no longer be binding if that *matériel* were utilized in any other way than for the health service.

PART III.—SPECIAL RULES FOR WARS ON SEA[1]

ARTICLE 22

The boats which, at their own risk and peril, during and after an engagement pick up the shipwrecked or wounded, or which having picked them up, convey them on board a neutral or hospital ship, shall enjoy, until the accomplishment of their mission, the character of neutrality, as far as the circumstances of the engagement and the position of the ships engaged will permit.

The appreciation of these circumstances is entrusted to the humanity of all the combatants.

The wrecked and wounded thus picked up and saved must not serve again during the continuance of the war.

ARTICLE 23

The religious, medical, and hospital staff of any captured vessel are declared neutral, and, on leaving the ship, shall remove the articles and surgical instruments which are their private property.

ARTICLE 24

The staff designated in the preceding article must continue to fulfil their functions in the captured ship, assisting in the removal of the wounded made by the victorious party; they will then be at liberty to return to their country, in conformity with Article 15.

The stipulations of Article 14 are applicable to the pay and allowance of the staff.

ARTICLE 25

The military hospital ships shall remain under martial law in all that concerns their stores; they shall become the property of the captor, but the latter must not divert them from their special appropriation during the continuance of the war.

[1] Articles 22–30 below are reproduced from the 'Draft of Additional Articles for the Marine' voted in 1868 by the Geneva Conference.

ARTICLE 26

Any merchantman, to whatever nation she may belong, charged exclusively with removal of sick and wounded, is protected by neutrality, but the mere fact, noted on the ship's books, of the vessel's having been visited by an enemy's cruiser, renders the sick and wounded incapable of serving during the continuance of the war. The cruiser shall even have the right of putting on board an officer in order to accompany the convoy, and thus verify the good faith of the operation.

If the merchant ship also carries a cargo, her neutrality will still protect it, provided that such cargo is not of a nature to be confiscated by the belligerent.

The belligerents retain the right to interdict neutralized vessels from all communication, and from any course which they may deem prejudicial to the secrecy of their operations.

In urgent cases special conventions may be entered into between commanders in chief, in order to neutralize temporarily and in a special manner the vessels intended for the removal of the sick and wounded.

ARTICLE 27

Wounded or sick sailors and soldiers, when embarked, to whatever nation they may belong, shall be protected and taken care of by their captors.

Their return to their own country shall be subject to the provisions of Article 2.

ARTICLE 28

The distinctive flag to be used with the national flag, in order to indicate any vessel or boat which may claim the benefits of neutrality, in virtue of the principles of this Convention, is a white flag with a red cross.

The belligerents may exercise in this respect any mode of verification which they may deem necessary.

Military hospital ships shall be distinguished by being painted white outside, with green strake.

ARTICLE 29

The hospital ships which are equipped at the expense of the aid societies, recognized by the Governments signing this Convention, and which are furnished with a commission emanating from the sovereign, who shall have given express authority for their being fitted out, and with a certificate from the proper naval authority that they have been placed under his control during their fitting out and on their final departure, and that they were then appropriated solely to the purpose of their mission, shall be considered neutral, as well as the whole of their staff.

They shall be recognized and protected by the belligerents.

They shall make themselves known by hoisting, together with their national flag, the white flag with a red cross. The distinctive mark of their staff, while performing their duties, shall be an armlet of the same colours. The outer painting of these hospital ships shall be white, with red strake.

These ships shall bear aid and assistance to the wounded and wrecked belligerents, without distinction of nationality.

They must take care not to interfere in any way with the movements of the combatants.

During and after the battle they must do their duty at their own risk and peril.

The belligerents shall have the right of controlling and visiting them ; they will be at liberty to refuse their assistance, to order them to depart, and to detain them if the exigencies of the case require such a step.

The wounded and wrecked picked up by these ships cannot be reclaimed by either of the combatants, and they will be required not to serve during the continuance of the war.

ARTICLE 30

In naval wars any strong presumption that either belligerent takes advantage of the benefits of neutrality, with any other view than the interest of the sick and wounded, gives to the other belligerent, until proof to the contrary, the right of suspending the Convention, as regards such belligerent.

Should this presumption become a certainty, notice may be given to such belligerent that the Convention is suspended with regard to him during the whole continuance of the war.

PART IV.—SUPPLEMENTARY CLAUSES

ARTICLE 31

(Cf. Convention, Article 8.) The details of execution of the present Convention shall be regulated by the commanders in chief of the belligerent armies and fleets in conformity with the general principles enunciated therein.

ARTICLE 32

The use of the red cross on a white field, adopted as the emblem and distinctive sign of the sanitary service of forces on land and on sea, shall constitute, both in time of peace and in time of war, a monopoly reserved to the Governments signatory of the present Convention and to the civil aid societies for the wounded from which these Governments shall have officially accepted aid.

ARTICLE 33

Each of the contracting States shall extend, if need be, its penal legislation so that it will provide for all possible infractions of the present Convention.

Within three years from this date these laws, whether old or new, shall be brought to the notice of the Swiss Federal Council, which shall communicate them to all the contracting Powers.

The changes that one or another of these Powers may later make in its penal code shall also be notified in the same manner to those entitled to notice.

ARTICLE 34

Measures shall be taken by each of the States signatory of the present Convention to the end that it may be frequently brought to the attention of its troops, as well as the penalties to which those who violate it are exposed.

ARTICLE 35

(Cf. Convention, Article 9.) The high contracting Powers have agreed to communicate the present Convention to the Governments that signed that of August 22, 1864,

and have not been able to send plenipotentiaries to the present conference, and invite them to accede to it ; the protocol is left open for this purpose.

A similar step shall be taken with regard to the Governments that have not yet acceded to the Convention of 1864.

ARTICLE 36

(Cf. Convention, Article 10.) The present Convention shall be ratified and the ratifications thereof shall be exchanged at Berne within four months or sooner if possible.

ARTICLE 37

Beginning from the day when the present convention shall be promulgated in the States signatory of that of August 22, 1864, the latter shall be abrogated so far as concerns them and shall cease to be invoked between them, but it may always be invoked by those who remain bound thereby.

In faith of which the respective plenipotentiaries have signed the present act and have set their seals thereto.

Done at Geneva, the . . .

DRAFT ADDITIONAL ARTICLES TO THE CONVENTION OF AUGUST 22, 1864, FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED IN THE ARMIES IN THE FIELD, SIGNED AT GENEVA, OCTOBER 20, 1868 [1]

ARTICLE 1

The personnel designated in Article 2 of the Convention shall, after occupation by the enemy, continue to give, in accordance with the needs, its succour to the sick and wounded of the ambulance or hospital which it serves.

When it requests to withdraw, the commander of the troops of occupation shall fix the time of its departure, which may be postponed only for a short period in case of military necessity.

ARTICLE 2

Steps shall be taken by the belligerent Powers to assure to the neutralized personnel fallen into the hands of the enemy army the complete enjoyment of its salary.

ARTICLE 3

In the conditions provided for in Articles 1 and 4 of the Convention, the word ' ambulance ' applies to field hospitals and other temporary establishments which follow troops upon the field of battle to receive there the sick and wounded.

ARTICLE 4

Conformably to the spirit of Article 5 of the Convention and to the reservations mentioned in the protocol of 1864, it is declared that for the apportionment of the charges relative to the quartering of troops and war contributions, account shall be taken only in an equitable manner of the charitable zeal displayed by the inhabitants.

[1] Cf. Gustave Moynier, *La revision de la Convention de Genève. Étude historique et critique suivie d'un Projet de Convention revisée* (Geneva, 1898), p. 57.

ARTICLE 5

By extension of Article 6 of the Convention, it is stipulated that, with the exception of the officers, whose retention would be important in the changes of war, and within the limits fixed by the second paragraph of this article, the wounded fallen into the hands of the enemy, even though they may not be considered incapable of serving, shall be sent back to their country after their recovery, or earlier if possible, on condition, however, that they will not again take up arms during the continuance of the war.

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11. PROVISIONAL PROGRAM PROPOSED BY THE SWISS FEDERAL COUNCIL IN 1898

STATEMENT OF SOME IDEAS TO BE EXAMINED IN REVISING THE GENEVA CONVENTION [1]

A. *Propositions connected with the text of* 1864

1. To neutralize the sanitary staff under all circumstances, and not only ' whilst so employed and so long as there remain any wounded to bring in or to succour '.
2. To neutralize to a greater degree the sanitary *matériel.*
3. To give a precise definition of ' ambulance '.
4. To declare that convoys of evacuation :
   (*a*) Cannot leave besieged or blockaded places without the consent of the enemy.
   (*b*) Can cross a neutral territory provided that the agents accompanying them as well as their *matériel* are exclusively sanitary and that the persons removed are not prisoners of war.
5. To proclaim the cessation of neutrality :
   (*a*) For the wounded and sick, as soon as they are in condition to resume service, the enemy detaining them having then the power to keep them as prisoners.
   (*b*) For the sanitary personnel, if it commits hostile acts unless for its own defence, the carrying of arms not being otherwise forbidden it.
   (*c*) For the sanitary *matériel,* if it is diverted from its normal purpose.
6. To omit the provisions relative to the inhabitants in the theatre of war.
7. To oblige every army in retreat to leave, on the field of battle and in its hospitals that have fallen into the power of the enemy, a part of its sanitary staff and equipment to care for its wounded there.
8. To stipulate that the personnel mentioned under No. 7 :
   (*a*) Should not have the right to remove its wounded toward its own army.
   (*b*) Should operate under the superior authority of the enemy.
   (*c*) Should be treated like the sanitary personnel of the enemy of the same rank as to pay and subsistence.
9. To guarantee that the wounded shall be protected on the battle-field, after the fight, against pillage and ill-treatment.

[1] Moynier, *La revision de la Convention de Genève,* p. 58. This statement was printed by the Swiss Federal Council as a provisional list of suggestions for the use of the experts consulted on the projected revision. A detailed study of these suggestions is made by Moynier at pp. 15–39 of his cited work.

B. *Various proposals*

10. To require :

(*a*) That the burial or cremation of the dead be preceded by a careful examination of the corpse.

(*b*) That every soldier wear a mark that will establish his identity.

(*c*) That the list of dead, wounded, and sick brought in by the enemy be sent as soon as possible by him to the authorities of their country or of their army.

11. To neutralize, under certain conditions to be determined, the personnel and *matériel* of civil associations devoted to the care of wounded soldiers.

12. To make the use of the sign of the red cross on a white field a legal monopoly extending in time of peace to certain civil associations to be determined upon.

13. To ensure a penal sanction for the prescriptions of the Convention.

14. To prescribe the most indispensable measures to bring the tenor of the Convention to the knowledge of troops and populations as well as the penalties incurred in violating it.

15. To render applicable to naval warfare, in one way or another, the humanitarian rules of the law of nations that have been admitted for land warfare.

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12. CIRCULAR OF THE MINISTER OF FOREIGN AFFAIRS TO THE DIPLOMATIC REPRESENTATIVES OF THE NETHERLANDS ACCREDITED TO PARIS, BRUSSELS, BERLIN, ST. PETERSBURG, VIENNA, LONDON, FLORENCE, MADRID, WASHINGTON, AND STOCKHOLM

THE HAGUE, *February* 13, 1871.

MR. .....

In the enclosed address to the King, the Chamber of Commerce of Amsterdam expresses the wish that the Government, in the coming peace negotiations or indeed in the London Conference, will attempt to bring about a recognition of the principle of the inviolability of private property at sea and to define the notion of contraband of war.

The enclosed answer will apprise you of the action provisionally taken with the consent of the King on the subject of the said address, and, in consequence, what steps are to be taken by the Legations of his Majesty.

After the fruitless result of previous attempts supported likewise by the Netherlands, I cannot overlook the obstacles which may still hinder perhaps the accomplishment of the wishes of the Chamber of Commerce, nor misunderstand the prolonged resistance which may be expected from various quarters.

Although it has seemed to me that this state of affairs should not prevent us from trying all means to attain an end so desirable for the Netherlands, it is not my intention that for the present you make any precise proposals to this end. At the outset it would be judicious to gather information respecting the views of the Government to which you are accredited.

Your conversations with the influential persons with whom you find yourself in touch will of themselves provide you with occasions for sounding them on this subject, for fostering in them favourable dispositions and for showing them the advantage to be reaped from the projected reform.

It would be important above all to get acquainted with their way of thinking not only with respect to an eventual assistance from them but also with respect to the opportuneness of the moment and with the reception which more precise proposals might eventually meet with.

I leave it to your discretion and your acquaintance with local conditions to manage the matter in the way that seems most suitable to you, and I await the result of your inquiries with the greatest interest.

Be good enough to accept, Mr. ....., the assurance of my most distinguished consideration.

GERICKE VAN HERWIJNEN

C. USE OF GOOD OFFICES, MEDIATION AND FACULTATIVE ARBITRATION

1. PROPOSAL OF THE EARL OF CLARENDON TO THE CONGRESS OF PARIS, 1856[1]

Protocol No. XXIII

Present : the plenipotentiaries of Austria, France, Great Britain, Prussia, Russia, Sardinia, Turkey.

. . . . . .

The Earl of Clarendon, having asked permission to present to the Congress a proposal which he thought ought to be favourably received, said that the evils of war were still so present to all minds that every means should be sought which might prevent a repetition of them ; that in Article 8 of the treaty of peace a provision had been inserted which recommended recourse to the mediation of a friendly State, before resorting to force, in case a dispute should arise between the Porte and one or more of the other signatory Powers.

The first plenipotentiary of Great Britain thought that this happy innovation might be given more general application, and thus become an obstacle in the way of disputes which often arise only because explanations and understandings are not always possible.

He then suggested that they co-operate in drawing up a resolution calculated to assure, in the future, this chance of continuance to the preservation of peace, without, however, affecting the independence of Governments.

Count Walewski said that he was authorized to support the idea set forth by the first plenipotentiary of Great Britain ; he asserted that the plenipotentiaries of France were all willing to agree upon the insertion in the protocol of a *vœu* which, while fully in accord with the tendencies of our age, should in no way interfere with the freedom of action of the Governments.

Count de Buol stated that he would unhesitatingly concur in the opinion of the plenipotentiaries of Great Britain and France, should the resolution be in the form suggested by Count Walewski ; but he could not, in the name of his Court, give an absolute promise or one that might curtail the independence of the Austrian Cabinet.

[1] *British and Foreign State Papers* (1856), vol. 46, p. 133.
George William Frederick Villiers, fourth earl of Clarendon (1800–70), was Foreign Minister of England during the Crimean War.

The Earl of Clarendon answered that each Power was and would be the sole judge of what its honour and its interests required ; that he had no intention of limiting the authority of Governments, but only of giving them an opportunity of not resorting to arms every time disputes arose which might be settled by other means.

Baron de Manteuffel said that the King, his august master, fully shared the ideas expressed by the Earl of Clarendon ; that he therefore felt himself authorized to support them and to develop them as far as possible.

Count Orloff, while recognizing the wisdom of the proposal made to the Congress, felt that he would better refer the matter to his Court, before expressing the opinion of the plenipotentiaries of Russia.

. . . . . .

Count Walewski added that there was no question either of stating a right or of giving a pledge ; that the *vœu* expressed by the Congress could not, in any case, alienate the freedom of judgment that every independent Power must, in such matters, reserve to itself ; that there was, therefore, no disadvantage in spreading the Earl of Clarendon's idea abroad, and in giving it the widest range possible.

. . . . . .

Count de Buol commended the proposal, as Lord Clarendon had presented it, from a humanitarian point of view ; but he could not adhere to it if it were to be given too great compass, or if conclusions were to be drawn from it favourable to *de facto* Governments and to doctrines which he could not accept.

He hoped, however, that the Congress, at the very moment of bringing its labours to an end, would not find itself obliged to consider irritating questions which might disturb the perfect harmony that had always existed among the plenipotentiaries.

. . . . . .

After this, the plenipotentiaries, in the name of their Governments, unhesitatingly expressed the *vœu* that the States between which serious disputes should arise, before taking up arms, should have recourse, in so far as circumstances would allow, to the good offices of a friendly Power.

The plenipotentiaries hope that the Governments not represented at the Congress will concur in the idea which has inspired the *vœu* embodied in the present Protocol.

[Here follow signatures of the plenipotentiaries.]

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2. MOTION OF MANCINI [1]

On November 24, 1875, Mr. Mancini presented and elaborated before the Chamber of Deputies of the Kingdom of Italy the following motion :

> The chamber expresses the *vœu* that, in its foreign relations, the King's Government will endeavour to render arbitration the accepted and usual method of settling, according to law, international controversies over matters capable of being arbitrated ; that, when the opportunity shall occur, it will suggest the introduction into treaties of a clause providing that disputes concerning their interpretation and execution

[1] Cf. *Rendiconti del Parlamento italiano, Sessione del 1873–4, discussioni della Camera dei deputati*, i, pp. 27–36 ; *Revue de droit international et de législation comparée*, 1874, p. 172.
Pasquale Stanislao Mancini (1817–88) was Italian Minister of Foreign Affairs from 1881 to 1885.

shall be referred to arbitrators ; and that it will persevere in the praiseworthy initiative taken by it many years ago, of concluding agreements between Italy and other Powers, with a view to making uniform and obligatory, in the interest of the respective nations, the essential rules of private international law.

In support of his motion, the president of the Institute of International Law made a most eloquent speech. After recalling the fact that the practice of international arbitration goes back to the infancy of the human race, that we find it more customary among the States of ancient Greece than among our modern States, that in the Middle Ages great jurisconsults, or university professors, were called upon to act as arbitrators between the Italian States, he said that, during the last centuries, arbitration seemed to have fallen into disuse. ' It is only in our time that opinion has reawakened in its favour, and that an extraordinary, I might say, an almost excessive confidence in its application has been manifested.'

What, asked Mr. Mancini, is the reason for this fact ? It is that humanity, during the past few years, has seen on one hand the bloody spectacle of two titanic struggles : the American Civil War and the Franco-Prussian War ; and, on the other, the calm and peaceful settlement by arbitration of a most serious dispute between two great countries.

' This salutary example . . . has aroused the attention of wise men and of the public generally, and the former, coming from all the countries of Europe and America, have met during the past few months at Ghent and at Brussels. . . .' The speaker alluded to the program of these meetings and to the favour with which these ' noble proposals ', as well as that of Mr. Henry Richard in the House of Commons, had been received by ' the public conscience and the general opinion of all civilized countries '. He pointed out the conciliatory attitude of the people and the Government of England after the Geneva decision, the similar disposition of America should she have lost. Reverting to the Richard motion, he emphasized the progress made by public opinion since the time a similar motion of Cobden's had been defeated (in 1849) by 176 votes to 87—the enthusiasm with which the motion had been received by all parties in Italy ; the *vœu* expressed by the congress of Italian jurists ; the desire of many statesmen to see similar motions presented in the different parliaments of Europe.

But, in presenting his proposal, Mr. Mancini felt obliged to limit its application, and to state his opinion of the practical value of the principle itself. Here we quote verbatim :

> To proclaim this principle is not, in my opinion, the same thing as to seek the final abolition of war and the preservation of perpetual peace. Doubtless it is a lofty, honourable, and noble thing to wish that the scourge of war shall disappear completely from the face of the earth. But legislators, statesmen, and political assemblies should pass only those resolutions which are practically applicable, and the benefit of which reason and experience have proved.
>
> Now, we believe that neither the arguments of lawyers nor the votes of assemblies will ever make war entirely disappear.
>
> Perhaps we may hope that the slow, but salutary and irresistible action of civilization, modifying ideas, opinions, and customs, may one day succeed in making war impossible, as it has made impossible other institutions equally sanctioned by the authority of the ages, such as torture and slavery.
>
> Moreover, I wish to state clearly that I consider as neither just, nor useful, nor consequently as desirable, the indiscriminate condemnation of every kind of war, especially of defensive war, that is to say, the use of all the forces of a free people to repel invasion and foreign tyranny, and to preserve its independence. Likewise

it would be no progress, but a return to barbarism, to do away with codes and to prevent the exercise of the right of self-defence against an unjust and violent aggression.

No, gentlemen, this war that I shall call holy and moral, when carried on within just bounds, without abuse or excesses, will never be abolished. The citizen who sheds his blood in defending his country against foreign invasion will always be a hero to the public mind and an object of reverent admiration to posterity ; art, poetry and history will vie with each other forever in spreading laurels and tears on his tomb.

What, then, is the practical value of the proposition ?

Some think that the advocates of arbitration pledge themselves to apply it without restriction, even to questions of life and death, questions which involve existence, independence, national integrity—in a word, any of those absolute and fundamental rights which nature recognizes in all peoples, and which cannot be separated in thought from the very essence of every nation.

No, gentlemen, we are opposed to such exaggeration, and in the text of the proposition itself, stipulate only those matters which are capable of arbitration. For indeed there are rights, private as well as public, which can never be renounced nor made the subject of a valid agreement. Thus, in private relations, I might agree deliberately to a contract in which I declare myself the slave of another man ; this agreement would be void and stamped with intrinsic and hopeless illegality ; and as arbitration rests only on an agreement to arbitrate, and is valid only in so far as the agreement is valid, I could not therefore agree lawfully to refer to a third person the decision of the question whether or not I was the slave of another.

Apply this example to international relations. Just as the renunciation by contract of the existence, the independence, the national integrity of one State in favour of another would be intrinsically null and void, so would the agreement to refer these questions to arbitration be stamped with intrinsic invalidity.

But the most cursory glance is sufficient to show that these vital questions come up very rarely, and that on the other hand questions of various kinds frequently arise, questions of interpreting an agreement, regulating its execution, endeavouring to decide whether the provisions have been violated, whether an offence requiring reparation has been committed, and so on. Whoever is familiar with the administration of foreign affairs will bear witness to the fact that nearly all controversies which arise between Governments and at times endanger the peace of civilized nations, belong to this category.

Moreover, arbitration does not depend upon the will of a single individual ; our recommendation to the Government does not mean that we would be practically alone in renouncing the legal methods recognized in international society, of claiming and protecting rights. For arbitration to be possible, an agreement to arbitrate is necessary, and such an agreement requires the concurrent wills of all the parties interested. In giving our policy a peaceful tendency, one that is favourable to the arbitration system, we none the less preserve in it always our freedom of decision and of action . . .

Furthermore, Mr. Mancini called attention to the fact that the motion furnished a practical method of going further than an empty manifestation, in inserting a *compromis* clause in commercial, extradition, consular, postal, and other treaties. As a precedent in support of this part of his motion, he quoted a similar resolution passed by the United States Senate in February 1853.

Passing to the last part of the proposal, the speaker described the intolerable situation resulting from the conflict of the laws and of the jurisprudence of different countries in the matter of the rights of individuals ; the efforts made by the Italian Government from 1861 to 1867 to bring about an international agreement which should correct this state

of things ; the official mission which he, Mr. Mancini, undertook in 1867 to the French, Belgian, and Prussian Governments, the results of which had been delayed by political events.

The Minister of Foreign Affairs, Mr. Visconti-Venosta, gave his most unqualified support to the motion. He congratulated Mr. Mancini upon having proposed the most practical of all the formulas which up to that time had been submitted to a congress or to a political assembly. But he accepted the introduction of the *compromis* clause into treaties with some hesitation.

After a brilliant *extempore* speech by the reporter on the budget of foreign affairs, Mr. Boselli, the motion was put to a vote and adopted *unanimously*.

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3. RESOLUTION OF THE INSTITUTE OF INTERNATIONAL LAW ON THE COMPROMIS CLAUSE ADOPTED AT ZÜRICH IN 1877 [1]

The Institute of International Law urgently recommends the insertion in future international treaties of a *compromis* clause stipulating recourse to arbitration in case of a dispute concerning the interpretation and application of these treaties.

The Institute further proposes that, in consideration of the difficulty that the parties might have in agreeing in advance upon the procedure to be followed, the following provision be added to the *compromis* clause :

> If the contracting States have not agreed in advance upon other provisions regarding the procedure to be followed in the court of arbitration, the regulations sanctioned by the Institute at The Hague, August 28, 1875, shall be applied.

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4. ARTICLE 12 OF THE GENERAL ACT OF BERLIN, 1885 [2]

GENERAL ACT drawn up at Berlin, February 26, 1885, between France, Germany, Austria-Hungary, Belgium, Denmark, Spain, the United States, Great Britain, Italy, the Netherlands, Portugal, Russia, Norway and Sweden, and Turkey to regulate the freedom of commerce in the Kongo and Niger basins, as well as in the newly occupied territories on the western coast of Africa.

ARTICLE 12

Should a serious dispute, concerning or within the boundaries of the lands which are mentioned in Article 1, and to which the commercial liberty applies, arise between the Powers signatory to the present act or the Powers who shall hereafter adhere to it, these Powers agree, before taking up arms, to have recourse to the mediation of one or more friendly Powers.

In the same event, the same Powers reserve the right of optional recourse to arbitration proceedings.

[1] *Tableau général de l'organisation, des travaux et du personnel de l'Institut de droit international*, 1893, p. 131.

[2] De Clercq, *Recueil de traités*, vol. xiv, pp. 447, 454.

5. DRAFT OF REGULATIONS FOR INTERNATIONAL ARBITRAL PROCEDURE PREPARED BY THE INSTITUTE OF INTERNATIONAL LAW AT THE HAGUE, 1875 [1]

The Institute, desiring that recourse to arbitration for the settlement of international disputes be resorted to more and more by civilized peoples, hopes to be of service toward the realization of such progress by proposing for arbitral tribunals the following eventual regulations. It recommends them for adoption in whole or in part to States that may conclude *compromis*.

ARTICLE 1

The *compromis* is concluded by means of a valid international treaty.

It may be :

(*a*) *In advance*, either for all differences or for differences of a certain kind to be determined, that may arise between the contracting States.

(*b*) For one difference or several differences *already arisen* between the contracting States.

ARTICLE 2

The *compromis* gives to each contracting party the right of appealing to the arbitral tribunal that it designates for the decision of the dispute. In the absence of a designation of the number and the names of the arbitrators in the *compromis*, the arbitral tribunal shall settle upon this according to the provisions laid down by the *compromis* or by another convention.

In the absence of any provision, each of the contracting parties chooses on its own part an arbitrator, and the two arbitrators thus named choose a third arbitrator or designate a third person who shall select him.

If the two arbitrators named by the parties cannot agree upon the choice of a third arbitrator, or if one of the parties refuses the co-operation that it owes under the *compromis* for the formation of the arbitral tribunal, or if the person designated refuses to make a choice, the *compromis* becomes of no effect.

ARTICLE 3

If at the outset, or because they have been unable to come to an agreement upon the choice of arbitrators, the contracting parties have agreed that the arbitral tribunal should be formed by a third person designated by them, and if the designated person takes upon himself the formation of the arbitral tribunal, the steps to be followed to this end shall in the first instance be in accordance with the provisions of the *compromis*. In the absence of provisions, the designated third person may either himself name the arbitrators or propose a certain number of persons among whom each of the parties shall choose.

ARTICLE 4

Sovereigns and heads of Governments without any restriction shall be eligible to be named international arbitrators, and also all persons who have the capacity to exercise the functions of arbitrator under the common law of their country.

[1] *Tableau général de l'organisation, des travaux et du personnel de l'Institut de droit international* (Paris, 1893), p. 124.

ARTICLE 5

If the parties have legally agreed on arbitrators individually determined, the incapacity of or a valid exception to even a single one of these arbitrators voids the entire *compromis*, unless the parties can come to an accord upon another competent arbitrator.

If the *compromis* does not carry an individual determination of the arbitrator in question, it is necessary, in case of incapacity or valid exception, to follow the course prescribed for the original choice (Articles 2, 3).

ARTICLE 6

The declaration of acceptance of the office of arbitrator is made in writing.

ARTICLE 7

If an arbitrator refuses the arbitral office, or if he withdraws after having accepted it, or if he dies, or if he becomes insane, or if he is legally challenged by reason of incapacity under the terms of Article 4, application of the provisions of Article 5 shall be made.

ARTICLE 8

If the seat of the arbitral tribunal is not mentioned in the *compromis* or in a subsequent convention between the parties, its determination is made by the arbitrator or a majority of the arbitrators.

The arbitral tribunal is authorized to change its seat only in case the accomplishment of its functions at the place agreed upon is impossible or clearly dangerous.

ARTICLE 9

The arbitral tribunal, if composed of several members, appoints one of them as president, taken from its number, and selects one or more secretaries.

The arbitral tribunal decides in what language or languages its deliberations and the arguments of the parties shall take place, and the documents and other instruments of proof shall be presented. It keeps a record of its deliberations.

ARTICLE 10

All members shall be present at the deliberations of the arbitral tribunal. The tribunal may nevertheless delegate to one or several members or even commit to third persons certain investigations.

If the arbitrator is a State or its head, a municipal or other corporation, an authority, a faculty of law, a learned society, or the actual president of the municipal or other corporation or authority, faculty, or company, all the arguments may take place with the consent of the parties before the commissioner named *ad hoc* by the arbitrator. A protocol thereof shall be drawn up.

ARTICLE 11

No arbitrator is authorized without the consent of the parties to name a substitute.

ARTICLE 12

If the *compromis* or a subsequent convention between the parties prescribes for the arbitral tribunal the procedure to be followed, or the observance of a determined and

positive law of procedure, the arbitral tribunal must conform to that provision. In the absence of such a provision, the procedure to be followed shall be freely chosen by the arbitral tribunal, which is only bound to conform to the principles that it has declared to the parties that it desires to follow.

The direction of the arguments belongs to the president of the arbitral tribun al.

ARTICLE 13

Each of the parties may appoint one or more representatives before the arbitral tribunal.

ARTICLE 14

Exceptions based on incapacity of arbitrators should be advanced before any other. If the parties are silent, any subsequent objection is inadmissible, except in cases of incapacity originating subsequently.

The arbitrators are to decide on the exceptions based on the incompetence of the arbitral tribunal, except in the recourse referred to in Article 24, paragraph 2, and in conformity with the provisions of the *compromis*.

There shall be no appeal from preliminary judgments on competence, unless coupled with an appeal from the final arbitral decision.

In case doubt as to competence depends on the interpretation of a clause of the *compromis*, the parties are deemed to have given to the arbitrators the power to decide the question, in the absence of a stipulation to the contrary.

ARTICLE 15

In the absence of provisions in the *compromis* to the contrary, the arbitral tribunal has the power :

1. To determine the forms and periods in which each party must, through its duly authorized representatives, present its conclusions, establish them in fact and in law, submit its instruments of proof to the tribunal, communicate them to the adverse party, produce the documents whose production the adverse party requires ;

2. To hold as admitted the contentions of each party which are not clearly disputed by the adverse party, as well as the alleged contents of documents which the adverse party fails to produce without sufficient reasons ;

3. To order new hearings, to require from each party explanation of doubtful points ;

4. To issue orders of procedure (on the conduct of the case), to cause proofs to be furnished, and, if necessary, to call upon the competent tribunal for judicial acts for which the arbitral tribunal is not qualified, particularly sworn testimony of experts and witnesses ;

5. To decide, in its free discretion, upon the interpretation of the documents produced and generally upon the worth of the instruments of proof presented by the parties.

The forms and periods mentioned under Nos. 1 and 2 of the present article shall be determined by the arbitrators in a preliminary order.

ARTICLE 16

Neither the parties nor the arbitrators can of their own accord involve any other States or third persons whatever in the case without special authorization expressed in the *compromis* and the previous consent of the third party.

The voluntary intervention of a third party is admissible only with the consent of the parties that have concluded the *compromis*.

ARTICLE 17

Counter-claims cannot be brought before the arbitral tribunal except so far as permitted by the *compromis*, or except when the two parties and the tribunal are in accord in admitting them.

ARTICLE 18

The arbitral tribunal gives judgment according to the principles of international law, unless the *compromis* imposes upon it different rules or leaves the decision to the free discretion of the arbitrators.

ARTICLE 19

The arbitral tribunal cannot refuse to give judgment under the pretext that it is not sufficiently informed either on the facts or on the legal principles that should be applied.

It must decide definitively each of the points in controversy. Nevertheless, if the *compromis* does not provide for a simultaneous definitive decision of *all* the points, the tribunal may, while deciding definitively certain points, reserve the others for a later proceeding.

The arbitral tribunal may render interlocutory or preliminary decrees.

ARTICLE 20

The delivery of the final decision must take place within the time fixed by the *compromis* or by a subsequent convention. In the absence of other determination, the period of two years is considered as agreed upon, beginning from the day of the conclusion of the *compromis*. The day of conclusion is not included therein ; nor is the time within which one or more arbitrators may have been prevented, by *force majeure*, from discharging their duties.

In case the arbitrators, by interlocutory decrees, order investigations, the time is increased by one year.

ARTICLE 21

Every final or provisional decision shall be made by a majority of all the arbitrators named, even when one or more of the arbitrators refuse to take part therein.

ARTICLE 22

If the arbitral tribunal finds that the contentions of none of the parties are established, it must declare this, and, if it is not limited in this respect by the *compromis*, it must lay down the real state of the law with respect to the parties in dispute.

ARTICLE 23

The arbitral award must be reduced to writing, and contain a statement of reasons, unless that is dispensed with under the stipulations of the *compromis*. It should be signed by each of the members of the arbitral tribunal. If the minority refuses to sign, the signature of the majority is sufficient, with the written declaration that the minority has refused to sign.

ARTICLE 24

The award, with the reasons, if stated, is notified to each party. The notification is effected by communication of a copy to the representative of each party, or to an empowered agent of each party appointed *ad hoc*.

Even if it has been communicated only to the representative or to the empowered agent of one party, the award can no longer be changed by the arbitral tribunal.

The tribunal, however, has the right, so long as the time mentioned in the *compromis* has not expired, to correct mere errors in writing or reckoning, even when neither of the parties makes a motion to that effect, and to complete the award on undecided disputed points on the motion of one party and after a hearing of the adverse party. An interpretation of the award as notified is not admissible unless both parties request it.

ARTICLE 25

The award when duly pronounced decides, within the limits of its scope, the dispute between the parties.

ARTICLE 26

Each party shall bear its own expenses and a half of the expenses of the arbitral tribunal, without regard to the decision of the arbitral tribunal on the indemnity which one or the other of the parties may be adjudged to pay.

ARTICLE 27

The arbitral award is null in case of an invalid *compromis*, or in case of excess of authority, or of proved corruption of one of the arbitrators, or of essential error.

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6. PROJECT OF DAVID DUDLEY FIELD [1]

Notice of dissatisfaction, and claim of redress

532. If any disagreement, or cause of complaint, should arise between nations, the one aggrieved must give formal notice thereof to the one of which it complains, specifying in detail the cause of complaint, and the redress which it seeks.

Answer to be given

533. Every nation, which receives from another, notice of any dissatisfaction, or cause of complaint, whether arising out of a supposed breach of this Code, or otherwise, must, within three months thereafter, give a full and explicit answer thereto.

Joint High Commission

534. Whenever a nation complaining of another and the nation complained of do not otherwise agree between themselves, they shall each appoint five members of a Joint High Commission, who shall meet together, discuss the differences, and endeavor to reconcile them, and within six months after their appointment, shall report the result to the nations appointing them respectively.

[1] Cf. David Dudley Field, *Draft Outlines of an International Code* (New York, 1872), pp. 369-71.

High Tribunal of Arbitration

535. Whenever a Joint High Commission, appointed by nations to reconcile their differences, shall fail to agree, or the nations appointing them shall fail to ratify their acts, those nations shall within twelve months after the appointment of the Joint High Commission, give notice of such failure to the other parties to this Code, and there shall then be formed a High Tribunal of Arbitration, in manner following: Each nation receiving the notice shall, within three months thereafter, transmit to the nations in controversy the names of four persons, and from the list of such persons the nations in controversy shall alternately, in the alphabetical order of their own names, as indicated in Article 16, reject one after another, till the number is reduced to seven, which seven shall constitute the tribunal.

The tribunal thus constituted shall, by writing signed by the members, or a majority of them, appoint a time and place of meeting, and give notice thereof to the parties in controversy; and at such time and place, or at other times and places to which an adjournment may be had, it shall hear the parties, and decide between them, and the decision shall be final and conclusive. If any nation receiving the notice fail to transmit the names of four persons within the time prescribed, the parties in controversy shall name each two in their places; and if either of the parties fail to signify its rejection of a name from the list, within one month after a request from the other to do so, the other may reject for it; and if any of the persons selected to constitute the tribunal shall die, or fail for any cause to serve, the vacancy shall be filled by the nation which originally named the person whose place is to be filled.

Each nation bound by Tribunal of Arbitration

536. Every nation, party to this Code, binds itself to unite in forming a Joint High Commission, and a High Tribunal of Arbitration, in the cases hereinbefore specified as proper for its action, and to submit to the decision of a High Tribunal of Arbitration, constituted and proceeding in conformity to Article 535.

Annual conference of representatives of nations

538. A conference of representatives of the nations, parties hereto, shall be held every year, beginning on the first of January, at the capital of each in rotation . . . for the purpose of discussing the provisions of this Code, and their amendment, averting war, facilitating intercourse, and preserving peace.

7. RULES RELATING TO A TREATY OF INTERNATIONAL ARBITRATION, PREPARED BY THE INTERNATIONAL LAW ASSOCIATION AT BRUSSELS, OCTOBER 1, 1895[1]

1. Unless it be intended that all possible differences between the nations parties to the treaty are to be referred to arbitration, the class of differences to be referred must be defined.

2. If the agreement for arbitration does not specify the number and names of the

[1] *The International Law Association, Report of the Seventeenth Conference held at Brussels, Oct. 1st–4th, 1895*, p. 228.

arbitrators, the tribunal of arbitration shall be constituted according to rules prescribed by that agreement or by another convention.

3. If the tribunal is to be specially constituted, the place of meeting must be fixed. This should be outside the territories of the parties to the controversy.

4. If the tribunal consists of more than two members, provision should be made for the decision of all questions by a majority of the arbitrators ; but the dissentient members should have the right of recording their dissent.

5. Each party should be required to appoint an agent to represent it in all matters connected with the arbitration.

6. The treaty should provide that if doubts arise as to whether a given subject of controversy be comprised among those agreed upon as subjects of arbitration in it, and if one of the parties require the doubt to be settled by arbitration, the other party must submit to such arbitration, but may require that the judgment be limited to the admissibility of the demand for arbitration.

7. Unless the treaty otherwise provide, the procedure should be by case, counter-case, and printed argument, each delivered by both parties simultaneously at a fixed date, with final oral argument. The periods of time allowed for the delivery of cases, counter-cases, and printed arguments should be fixed by the treaty, but the tribunal should have the power of extending the time. The tribunal itself should fix the time for hearing the oral argument.

8. Either party should be entitled to require production of any document in the possession or under the control of the other party, which, in the opinion of the tribunal, is relevant to a question in dispute, and to the production of which there is, in its opinion, no sufficient objection.

9. Neither party should be entitled to put in evidence documents (hereinafter called ' domestic documents ') which, having existed, or purporting to have existed, before the difference arose, were in possession of or known by one party or its predecessors in title, and not communicated to the other party or its predecessors in title, before the difference arose.

10. Solemn written statements made by a witness before a public officer should be admissible in evidence as proof of relevant facts, subject to the right hereinafter mentioned of cross-examining the witness. The value of such statements would be for the tribunal.

11. Either party should be entitled to require the other to produce, for oral examination before the tribunal at the hearing, any witness making on behalf of that other party such a statement as is mentioned in Article 10, whether the witness be amenable to the jurisdiction of the other party or not. When a witness cannot be produced before the tribunal, the tribunal may commission the judicial authorities exercising jurisdiction over the place of the witness's domicile to hold the necessary cross-examination. If it is found impossible to procure the attendance of the witness for cross-examination, it shall be open to the tribunal to reject his evidence.

12. Irrelevant evidence, domestic documents, and the statements of witnesses not produced for oral examination though required, may, on the application of the party against which they are adduced, be expunged by the tribunal ; and the tribunal, on a like application, should be at liberty to direct the reprinting of any volume of case, counter-case, printed argument, or appendix, in which the same should appear or be discussed.

13. The decision should be embodied in a written award in duplicate, made and delivered to the agents within a specified time from the close of the hearing. Interlocutory judgments or orders need not be published, but shall be notified to the agents of the parties.

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8. PLAN FOR THE INSTITUTION OF A PERMANENT INTERNATIONAL COURT OF ARBITRATION ADOPTED BY THE INTERPARLIAMENTARY CONFERENCE AT BRUSSELS, 1895[1]

The Interparliamentary Conference assembled at Brussels, considering the frequent occurrence of cases of international arbitration, the number and the extent of *compromis* clauses in treaties; desiring to see international justice and an international court established upon firm foundations,

Directs its president to recommend to the kind consideration of the Governments of civilized States the following provisions which may be submitted to a diplomatic conference or made the subject of special conventions.

1. The contracting parties shall constitute a *Permanent International Court of Arbitration* to take cognizance of the differences which shall be submitted to its decision.

Should a dispute arise between two or more of them, these parties shall decide whether the case is of a nature to be brought before the court, subject to the obligations that they may have contracted by treaty.

2. The court shall sit at . . .

The seat may be moved elsewhere by decision of a three-fourths majority of the adhering Powers.

The Government of the State in which the court sits shall guarantee its safety as well as the freedom of its discussions and decisions.

3. Each signatory or adhering Government shall name two members of the court. Two or more States may, however, appoint two members in common. The members of the court shall be appointed for a term of five years ; their powers may be renewed.

4. The salaries or compensation of the members of the court shall be paid by the State which appoints them.

The expenses of the court shall be divided equally among the adhering States.

5. The court shall elect from its members a president and a vice president for a term of one year. The president shall not be eligible for re-election until after a period of five years. The vice president shall take the place of the president whenever the latter shall be prevented from attending.

The court shall appoint its clerk and fix the number of employees that it deems necessary.

The clerk shall reside at the seat of the court and shall have charge of the archives.

6. The parties may, by common consent, take their case directly before the court.

7. A case shall be brought before the court by means of a notification sent to the clerk by the parties of their intention to submit their dispute to the court.

[1] *Revue générale de droit internationale public*, vol. ii, 1895, pp. 542–4.

The clerk shall immediately bring this notification to the attention of the president.

If the parties shall not have availed themselves of their right to bring their case directly before the court, the president shall select the members of the court who shall constitute a tribunal to pass upon the case in first instance.

At the request of one of the parties, the members to form this court shall be selected by the court itself.

Members appointed by the litigating States may not be members of the tribunal.

Members selected to sit may not decline.

8. The *compromis* shall be drawn up by the contending Governments; in default of an agreement, it shall be drawn up by the tribunal, or if occasion requires, by the court.

A cross demand may be drawn up.

9. The reasons on which the judgment is based shall be stated. The judgment shall be pronounced within two months after the close of the arguments. It shall be notified to the parties by the clerk.

10. Each party shall have the right of lodging an appeal within three months of the notification.

The appeal shall be brought before the court. The members appointed by the contending States and those who have composed the tribunal may not sit on it.

The procedure shall be as in the first instance. The decree of the court shall be final. It may not be disputed in any way whatever.

11. The execution of the judgments of the court shall be entrusted to the honour and good faith of the contending States.

The court shall apply the conventions of the parties which, in a *compromis*, would have given it the means of confirming its decisions peacefully.

12. The appointments prescribed by Article 3 shall be made within six months of the exchange of ratifications of the convention. They shall be brought, by diplomatic channels, to the attention of the adhering States.

The court shall be instituted and shall convene of right at its seat one month after the expiration of this period, whatever the number of its members. It shall proceed to the election of a president, vice president, and clerk, as well as to the elaboration of its rules of order.

13. The contracting parties shall formulate the organic rules of the court. They shall form an integral part of the convention.

14. The States which have not taken part in the convention shall be allowed to adhere to it in the customary manner.

Their adhesion shall be made known to the Government of the country where the court is sitting and by it to the other adhering Governments.

The Conference charges its president with investigating, and, if possible, of ascertaining whether Governments to the number of two or more would be disposed to take the initiative in establishing a court for the settlement of their disputes by peaceful methods.

9. INTERPARLIAMENTARY CONFERENCE ON ARBITRATION AND PEACE AT BRUSSELS IN 1897 [1]

The Interparliamentary Conference on Arbitration and Peace held at Brussels, from August 8–12, 1897, its eighth session under the presidency of Mr. Beernaert, President of the Belgian Chamber of Representatives. Fifteen States were represented at it: one member of the American Congress, Mr. Barrows, attended the meeting.

The first question appearing on the program of the Conference was that of 'the means of promoting the establishment of a Permanent International Court of Arbitration'. The Conference of 1896 had directed the permanent Interparliamentary Bureau to 'confer with some of the European Governments for the purpose of inducing a certain number of them to adopt the plan elaborated by the Brussels Conference of 1895 for the formation of a Permanent Court of Arbitration'. The Bureau, in pursuance of this resolution, addressed itself successively to the Dutch, Swiss, and Belgian Governments: the Netherlands thought that the time was not opportune for taking the initiative in the formation of the Court of Arbitration, Switzerland deferred her answer, Belgium, consulted last, has not yet answered. In the face of these results, the conference, at the request of Messrs. Descamps (Belgium), Passy (France), Rahusen (Netherlands), and Stanhope (Great Britain), on this point adopted the following resolution: 'The Interparliamentary Conference, repeating its former declarations, reiterates that it considers it of the greatest importance that one or more Governments take the initiative and co-operate with other Governments in the formation of a permanent court.'

On the subject of arbitration, the Conference further passed the following resolution, presented by Mr. Randal Cremer, in the name of the English delegation, and warmly supported by the representative of the American Congress, Mr. Barrows: 'While profoundly regretting that the United States Senate refused to ratify the Anglo-American arbitration treaty,[2] the Conference is nevertheless delighted with the progress that the principle of arbitration has made and with the fact that the resolutions passed by the Parliament of Great Britain, by the American Congress, the French Chamber of Deputies, and the Swiss National Council during the past year in favour of arbitration treaties, have been added to those of the parliaments of Austria, Belgium, Denmark, Norway, and Sweden. In addition to this the Conference expresses the strong hope that European parliaments and Governments will continue to strive for the conclusion of arbitration treaties with each other and with the American States, opening negotiations as soon as possible with the Governments of these countries. The Conference also learns with satisfaction that another arbitration treaty is being prepared, on the initiative of President McKinley, and has full confidence that this treaty will be ratified at the next session of Congress. The Conference offers its sincere thanks to the English and American Governments for the impulse they have given to the cause of arbitration and of peace by elaborating their great plan for settling disputes without either violence or bloodshed. The Conference rejoices at the fact that responsible politicians of two of the greatest States of the world have, by the treaty that they have drafted, admitted the possibility of arbitration and of the formation of a peace court. The President of the Conference is requested to communicate the foregoing resolutions to President McKinley, to the President of

[1] *Revue générale de droit international public*, vol. iv, p. 791.
[2] See *post*, p. 100.

the United States Senate, to Lord Salisbury, and to the Prime Ministers of the other Governments.'

Finally, also on the question of arbitration, the Conference formulated a *vœu* expressed thus : ' The Interparliamentary Conference expresses the wish that it may see its members seize every favourable opportunity, especially the conclusion of special arbitration conventions, to promote the concluding of general arbitration treaties. It specially calls the attention, particularly of its English and Belgian members, to the opportunity offered by the arbitration of the Ben Tillett case for the accomplishment of this result between Belgium and England.'

In addition to these resolutions, the Brussels Conference, on the initiative of Mr. Hirsch (Germany), accepted the following proposal relative to the investigation of difficulties that might arise among the several countries : ' When there shall arise, among two or more countries, a dispute of a nature to endanger peace, the administrator of the Interparliamentary Bureau at Berne, at the request of a parliamentary group of one of the countries interested in the dispute, shall immediately call a meeting of the assembly of delegates [1] at a place appointed by him. The assembly of delegates, after having informed themselves as accurately as possible, from both sides, concerning the questions in dispute, shall draw up a statement of them, shall form an opinion upon the dispute in question, and, through the parliamentary groups in each country, shall see to it that, by every means they deem proper, the conclusions of the assembly of delegates shall receive the greatest possible publicity.'

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10. TREATY OF WASHINGTON OF MAY 8, 1871 [2]

The four cases of arbitration

The Treaty of Washington of 1871 contains four cases of arbitration :

The first concerning acts in violation of neutrality (Articles 1–11) referred to a court of arbitration sitting at Geneva ;

The second concerning questions of validity in naval prizes (Articles 12–17) referred to a court of arbitration sitting at Washington ;

The third concerning fishing rights (Articles 18–25) referred to a court of arbitration sitting at Halifax ;

The fourth concerning a boundary dispute (Articles 34–42) referred to the arbitral decision of His Majesty the Emperor of Germany.

Three rules

A neutral Government is bound—

First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a Power with which it is at peace ; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise

[1] The assembly of delegates, composed of two representatives from each nation and elected at the beginning of each conference, acts as a pre-consultative committee to the conference.

[2] Cf. Martens, *Nouveau recueil général*, vol. 20, pp. 698, 702 ; *United States Statutes at Large*, vol. 17, p. 865.

or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

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11. PLAN OF A PERMANENT TRIBUNAL OF ARBITRATION, ADOPTED BY THE INTERNATIONAL AMERICAN CONFERENCE, APRIL 18, 1890[1]

ARTICLE 1

The republics of North, Central, and South America hereby adopt arbitration as a principle of American international law for the settlement of the differences, disputes, or controversies that may arise between two or more of them.

ARTICLE 2

Arbitration shall be obligatory in all controversies concerning diplomatic and consular privileges, boundaries, territories, indemnities, the right of navigation, and the validity, construction, and enforcement of treaties.

ARTICLE 3

Arbitration shall be equally obligatory in all cases other than those mentioned in the foregoing article, whatever may be their origin, nature, or object, with the single exception mentioned in the next following article.

ARTICLE 4

The sole questions excepted from the provisions of the preceding articles, are those which, in the judgment of any one of the nations involved in the controversy, may imperil its independence. In which case for such nation arbitration shall be optional; but it shall be obligatory upon the adversary Power.

ARTICLE 5

All controversies or differences, whether pending or hereafter arising, shall be submitted to arbitration, even though they may have originated in occurrences antedating the present treaty.

ARTICLE 6

No question shall be revived by virtue of this treaty, concerning which a definite agreement shall already have been reached. In such cases, arbitration shall be resorted to only for the settlement of questions concerning the validity, interpretation, or enforcement of such agreements.

[1] *International American Conference; Reports and Recommendations*, 1890, p. 2.

ARTICLE 7

The choice of arbitrators shall not be limited or confined to American States. Any Government may serve in the capacity of arbitrator, which maintains friendly relations with the nation opposed to the one selecting it. The office of arbitrator may also be entrusted to tribunals of justice, to scientific bodies, to public officials, or to private individuals, whether citizens or not of the States selecting them.

ARTICLE 8

The court of arbitration may consist of one or more persons. If of one person, he shall be selected jointly by the nations concerned. If of several persons, their selection may be jointly made by the nations concerned. Should no choice be agreed upon, each nation showing a distinct interest in the question at issue shall have the right to appoint one arbitrator on its own behalf.

ARTICLE 9

Whenever the court shall consist of an even number of arbitrators, the nations concerned shall appoint an umpire, who shall decide all questions upon which the arbitrators may disagree. If the nations interested fail to agree in the selection of an umpire, such umpire shall be selected by the arbitrators already appointed.

ARTICLE 10

The appointment of an umpire, and his acceptance, shall take place before the arbitrators enter upon the hearing of the questions in dispute.

ARTICLE 11

The umpire shall not act as a member of the court, but his duties and powers shall be limited to the decision of questions, whether principal or incidental, upon which the arbitrators shall be unable to agree.

ARTICLE 12

Should an arbitrator or an umpire be prevented from serving by reason of death, resignation, or other cause, such arbitrator or umpire shall be replaced by a substitute to be selected in the same manner in which the original arbitrator or umpire shall have been chosen.

ARTICLE 13

The court shall hold its sessions at such place as the parties in interest may agree upon, and in case of disagreement or failure to name a place the court itself may determine the location.

ARTICLE 14

When the court shall consist of several arbitrators, a majority of the whole number may act, notwithstanding the absence or withdrawal of the minority. In such case the majority shall continue in the performance of their duties, until they shall have reached a final determination of the questions submitted for their consideration.

ARTICLE 15

The decision of a majority of the whole number of arbitrators shall be final both on the main and incidental issues, unless in the agreement to arbitrate it shall have been expressly provided that unanimity is essential.

ARTICLE 16

The general expenses of arbitration proceedings shall be paid in equal proportions by the Governments that are parties thereto; but expenses incurred by either party in the preparation and prosecution of its case shall be defrayed by it individually.

ARTICLE 17

Whenever disputes arise, the nations involved shall appoint courts of arbitration in accordance with the provisions of the preceding articles. Only by the mutual and free consent of all such nations may those provisions be disregarded, and courts of arbitration appointed under different arrangements.

ARTICLE 18

This treaty shall remain in force for twenty years from the date of the exchange of ratifications. After the expiration of that period, it shall continue in operation until one of the contracting parties shall have notified all the others of its desire to terminate it. In the event of such notice, the treaty shall continue obligatory upon the party giving it for one year thereafter, but the withdrawal of one or more nations shall not invalidate the treaty with respect to the other nations concerned.

ARTICLE 19

This treaty shall be ratified by all the nations approving it according to their respective constitutional methods, and the ratifications shall be exchanged in the city of Washington on or before the 1st day of May, A.D. 1891. Any other nation may accept this treaty and become a party thereto by signing a copy thereof and depositing the same with the Government of the United States; whereupon the said Government shall communicate this fact to the other contracting parties.

NON-RATIFICATION OF THE TREATY

The treaty was signed by the representatives of eleven States: Bolivia, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Salvador, the United States of America, the United States of Brazil, the United States of Venezuela, and Uruguay.

However, in spite of Article 19, all the signatory States have failed to exchange the ratifications within the stipulated period.

An attempt has been made to renew the treaty. An agreement was had upon the form of extension, which was submitted to all the signatory Powers on October 29, 1891. The proposition was accepted by the Governments of Ecuador, Guatemala, Honduras, Venezuela, Nicaragua, Salvador, and Bolivia, but the negotiations ended there.

The Government of the United States has notified the Pan American treaty of 1890 to all the States of Europe, inviting them to adhere to the provisions contained therein.

12. LETTERS FROM LORD SALISBURY TO THE BRITISH AMBASSADOR AT WASHINGTON[1]

FOREIGN OFFICE, *March* 5, 1896.

SIR:

In the spring of last year communications were exchanged between your Excellency and the late Mr. Gresham upon the establishment of a system of international arbitration for the adjustment of disputes between the two Governments. Circumstances, to which it is unnecessary to refer, prevented the further consideration of the question at that time.

But it has again been brought into prominence by the controversy which has arisen upon the Venezuelan boundary. Without touching upon the matters raised by that dispute, it appears to me that the occasion is favourable for renewing the general discussion upon a subject in which both nations feel a strong interest, without having been able up to this time to arrive at a common ground of agreement. The obstacle which has separated them has been the difficulty of deciding how far the undertaking to refer all matters in dispute is to be carried. On both sides it is admitted that some exceptions must be made. Neither Government is willing to accept arbitration upon issues in which the national honour or integrity is involved. But in the wide region that lies within this boundary the United States desires to go further than Great Britain.

For the view entertained by Her Majesty's Government there is this consideration to be pleaded, that a system of arbitration is an entirely novel arrangement, and, therefore, the conditions under which it should be adopted are not likely to be ascertained antecedently. The limits ultimately adopted must be determined by experiment. In the interests of the idea, and of the pacific results which are expected from it, it would be wise to commence with a modest beginning, and not to hazard the success of the principle by adventuring it upon doubtful ground. The suggestion in the heads of treaty which I have enclosed to your Excellency will give an opportunity for observing more closely the working of the machinery, leaving it entirely open to the contracting parties, upon favourable experience, to extend its application further, and to bring under its action controversies to which for the present it can only be applied in a tentative manner, and to a limited extent.

Cases that arise between States belong to one of two classes. They may be private disputes in respect to which the State is representing its own subjects as individuals; or they may be issues which concern the State itself considered as a whole. A claim for an indemnity or for damages belongs generally to the first class; a claim to territory or sovereign rights belongs to the second. For the first class of differences the suitability of international arbitration may be admitted without reserve. It is exactly analogous to private arbitration; and there is no objection to the one that would not apply equally to the other. There is nothing in cases of this class which should make it difficult to find capable and impartial arbitrators. But the other class of disputes stands on a different footing. They concern the State in its collective capacity; and all the members of each State, and all other States who wish it well, are interested in the issue of the litigation. If the matter in controversy is important, so that defeat is a serious blow to the credit

[1] *British and Foreign State Papers*, 1896, vol. 88, pp. 1248, *et seq.*
Robert Arthur Talbot Gascoigne-Cecil, Marquis of Salisbury (1830–1903) was appointed Foreign Secretary in 1878, and took a prominent part in the Congress of Berlin. He held the office of Prime Minister of England during the Egyptian and South African Wars.

or the power of the litigant who is worsted, that interest becomes a more or less keen partisanship. According to their sympathies, men wish for the victory of one side or another.

Such conflicting sympathies interfere most formidably with the choice of an impartial arbitrator. It would be too invidious to specify the various forms of bias by which, in any important controversy between two great Powers, the other members of the commonwealth of nations are visibly affected. In the existing condition of international sentiment, each great Power could point to nations whose admission to any jury by whom its interests were to be tried it would be bound to challenge ; and in a litigation between two great Powers the rival challenges would pretty well exhaust the catalogue of the nations from whom competent and suitable arbiters could be drawn. It would be easy, but scarcely decorous, to illustrate this statement by examples. They will occur to any one's mind who attempts to construct a panel of nations, capable of providing competent arbitrators, and will consider how many of them would command equal confidence from any two litigating Powers.

This is the difficulty which stands in the way of unrestricted arbitration. By whatever plan the tribunal is selected, the end of it must be that issues in which the litigant States are most deeply interested will be decided by the vote of one man, and that man a foreigner. He has no jury to find his facts ; he has no court of appeal to correct his law ; and he is sure to be credited, justly or not, with a leaning to one litigant or the other. Nations cannot afford to run such a risk in deciding controversies by which their national position may be affected, or a number of their fellow subjects transferred to a foreign rule.

The plan which is suggested in the appended draft treaty would give a court of appeal from the single voice of the foreign judge. It would not be competent for it to alter or reverse the umpire's decision, but if his judgment were not confirmed by the stipulated majority it would not stand. The court would possess the highest guaranty for impartiality which a court belonging to the two litigating nations could possess. Its operation in arresting a faulty or doubtful judgment would make it possible to refer great issues to arbitration without the risk of a disastrous miscarriage of justice.

I am aware that to the warmer advocates of arbitration this plan will seem unsatisfying and imperfect. But I believe that it offers an opportunity of making a substantial advance, which a more ambitious arrangement would be unable to secure ; and if, under its operation, experience should teach us that our apprehensions as to the danger of reposing an unlimited confidence in this kind of tribunal are unfounded, it will be easy by dropping precautions that will have become unnecessary, to accept and establish the idea of arbitration in its most developed form.

I beg that you will read this dispatch and the appended draft treaty to the Secretary of State, and leave him a copy if he desires it.

I am, etc.,

SALISBURY

HEADS OF A TREATY FOR ARBITRATION IN CERTAIN CASES

1. Her Britannic Majesty and the President of the United States shall each appoint two or more permanent judicial officers for the purposes of this treaty ; and on the appearance of any difference between the two Powers, which, in the judgment of either of them,

cannot be settled by negotiation, each of them shall designate one of the said officers as arbitrator ; and the two arbitrators shall hear and determine any matter referred to them in accordance with this treaty.

2. Before entering on such arbitration, the arbitrators shall select an umpire, by whom any question upon which they disagree, whether interlocutory or final, shall be decided. The decision of such umpire upon any interlocutory question shall be binding upon the arbitrators. The determination of the arbitrators, or, if they disagree, the decision of the umpire shall be the award upon the matters referred.

3. Complaints made by the nationals of one Power against the officers of the other ; all pecuniary claims or groups of claims, amounting to not more than £100,000, made on either Power by the nationals of the other, whether based on an alleged right by treaty or agreement, or otherwise ; all claims for damages or indemnity under the said amount ; all questions affecting diplomatic or consular privileges ; all alleged rights of fishery, access, navigation, or commercial privilege, and all questions referred by special agreement between the two parties, shall be referred to arbitration in accordance with this treaty ; and the award thereon shall be final.

4. Any difference in respect to a question of fact, or of international law, involving the territory, territorial rights, sovereignty, or jurisdiction of either Power, or any pecuniary claim or group of claims of any kind, involving a sum larger than £100,000, shall be referred to arbitration under this treaty. But if in any such case, within three months after the award has been reported, either Power protests that such award is erroneous in respect to some issue of fact, or some issue of international law, the award shall be reviewed by a court composed of three of the judges of the Supreme Court of Great Britain and three of the judges of the Supreme Court of the United States ; and if the said court shall determine, after hearing the case, by a majority of not less than five to one, that the said issue has been rightly determined, the award shall stand and be final ; but in default of such determination it shall not be valid. If no protest is entered by either Power against the award within the time limited it shall be final.

5. Any difference, which in the judgment of either Power materially affects its honour or the integrity of its territory, shall not be referred to arbitration under this treaty except by special agreement.

6. Any difference whatever, by agreement between the two Powers, may be referred for decision by arbitration, as herein provided, with the stipulation that, unless accepted by both Powers, the decision shall not be valid.

The time and place of their meeting, and all arrangements for the hearing, and all questions of procedure shall be decided by the arbitrators or by the umpire if need be.

FOREIGN OFFICE, *May* 18, 1896.

SIR :

I have to acknowledge your Excellency's dispatch of the 13th ultimo, enclosing a note from Mr. Olney in reply to the proposals made by Her Majesty's Government for a general treaty of arbitration.

Her Majesty's Advisers have received Mr. Olney's dispatch with great satisfaction, in that it testifies clearly to the earnest desire which animates the Government of the United States to make effective provision for removing all differences of opinion which can arise

between the two nations. They regret that in some essential particulars the opinions of the two Governments do not as yet seem to be sufficiently in accord to enable them to come to a definite agreement upon the whole of this important subject. It appears to them, however, that there are some considerations bearing upon this matter to which the attention of the Government of the United States should be more particularly invited before the attempt to arrive at a general understanding ought to be laid aside.

I would say, in the first place, that Mr. Olney somewhat mistakes my meaning when he says that, in raising this question, I ' in terms excluded the consideration of the Venezuelan boundary dispute'. I wished to state our views upon the question of general arbitration without touching upon certain points in relation to which the two questions do not cover the same field. But I was well aware that any settlement to which we might arrive must in its general principles be applicable to disputes, not only between either of them and any other Government ; and therefore, with certain adaptations of detail, it would apply to a dispute between Great Britain and Venezuela. In this view I am glad to observe that I am at one with Mr. Olney, because I hold that, in discussing the safeguards by which a general system of arbitration should be sanctioned, it is important to bear in mind that any system adopted between our two nations ought to be such as can in principle be applied, if necessary, to their relations with other civilized countries.

Mr. Olney is satisfied with the provisions of Article 3 of my proposals, and the plan of arbitration which it contains. The only fault he finds with them is that they are too limited in their application. He thinks that they ' hardly cover other than controversies which as between civilized States could almost never endanger their peaceful relations '. It is possible that the language of the article may be modified with advantage. It certainly was not intended to apply only to controversies of a practically unimportant character. The discussions which arise out of disputed claims to territory, which are dealt with in Article 4, are, or may be, much graver, as well as much more difficult to decide. But it would not, I think, be difficult to show by a consideration of the history of the present century that controversies which have issued in war, or in warlike action, have not arisen exclusively or even mainly from disputed questions of territorial ownership. To examine the individual instances would involve a somewhat lengthy investigation, which is not necessary now. It is more material on the present occasion to dwell upon the encouraging fact that Her Majesty's Government and the Government of the United States are entirely agreed in approving the language of Article 3, and the policy it is designed to sanction. Under these circumstances, it appears to me to be a matter for regret that the two Governments should now neglect the opportunity of embodying their common view, so far as it is ascertained, in a separate convention. To do so would not be to prejudice in the slightest degree the chance of coming to an agreement on the more difficult portion of the subject, which concerns territorial claims. The first step would not prevent the ulterior steps being taken ; it would rather lead to them.

With respect to the mode of dealing with territorial claims, the views of the two Governments are still apart. The United States' Government wish that every claim to territory preferred by one neighbour against another shall go, as of right, before a tribunal or tribunals of arbitration, save in certain special cases of an exceptional character, which are to be solemnly declared by the legislature of either country to involve the ' national honour or integrity ' ; and that any dispute once referred, under the treaty, to arbitration, shall be decided finally and irrevocably without the reservation of any further powers to

either party to interfere. Her Majesty's Government are not prepared for this complete surrender of their freedom of action until fuller experience has been acquired. In their view, obligatory arbitration on territorial claims is, in more than one respect, an untried plan, of which the working is consequently a matter of conjecture. In the first place, the number of claims which would be advanced under such a rule is entirely unknown. Arbitration in this matter has as yet never been obligatory. Claims by one neighbour to a portion of the land of the other have hitherto been limited by the difficulty of enforcing them. Hitherto, if pressed to the end, they have meant war. Under the proposed system self-defence by war will, in these cases, be renounced, unless the claim can be said to involve 'the national honour and integrity'. The protection, therefore, which at present exists against speculative claims will be withdrawn. Such claims may, of course, be rejected by the arbiter ; if they are, no great harm is done to the claiming party. In the field of private right excessive litigation is prevented by the judgment for costs against the losing party ; but to a national exchequer the cost of an arbitration will be too small to be an effective deterrent. Whenever the result is, from any cause, a fair matter of speculation, it may be worth the while of an enterprising Government to hazard the experiment. The first result, therefore, of compulsory arbitration on territorial claims will, not improbably, be an enormous multiplication of their number. Such litigation can hardly fail to result, from time to time, in a miscarriage of justice ; but there will be a far more serious and certain evil resulting from it. Such litigation is generally protracted ; and while it lasts the future prospects of every inhabitant of the disputed territory are darkened by the gravest uncertainty upon one of the most important conditions that can affect the life of a human being, namely, the character of the Government under which he is to live. Whatever the benefits of arbitration may be in preventing war from arising out of territorial disputes, they may well be outweighed if the system should tend to generate a multiplicity of international litigation, blighting the prosperity of the border country exposed to it, and leaving its inhabitants to lie under the enduring threat either of a forcible change of allegiance or of exile.

The enforcement of arbitration in respect to territorial rights is also an untried project in regard to the provisions of the international law by which they are to be ascertained. This is in a most rudimentary condition ; and its unformed and uncertain character will aggravate the other dangers on which I have dwelt in a previous dispatch—the danger arising from the doubts which may attach to the impartiality and the competence of the arbitrators.

There are essential differences between individual and national rights to land, which make it almost impossible to apply the well-known laws of real property to a territorial dispute.

Whatever the primary origin of his rights, the national owner, like the individual owner, relies usually on effective control by himself or through his predecessor in title, for a sufficient length of time. But in the case of a nation, what is a sufficient length of time, and in what does effective control consist ? In the case of a private individual the interval adequate to make a valid title is defined by positive law. There is no enactment or usage or accepted doctrine which lays down the length of time required for international prescription ; and no full definition of the degree of control which will confer territorial property on a nation has been attempted. It certainly does not depend solely on occupation or the exercise of any clearly defined acts. The great nations in

both hemispheres claim, and are prepared to defend, their right to vast tracts of territory which they have in no sense occupied, and often have not fully explored. The modern doctrine of 'Hinterland' with its inevitable contradictions indicates the unformed and unstable condition of international law as applied to territorial claims resting on constructive occupation or control.

These considerations add to the uncertainty attaching to any general plan of arbitration in territorial disputes. The projected procedure for this purpose will be full of surprises: the nature of the tribunal, its ability and freedom from bias, may be open to much question; the law which it is to administer has yet to be constructed. Even if the number of such disputes is not much larger than those of which we have had experience in modern times, the application of so trenchant and uncertain an instrument to controversies in which the dearest interests and feelings of multitudes of men may be engaged cannot be contemplated without some misgiving. But if, as seems most probable, the facility of the procedure should generate a vastly augmented number of litigants desirous of rectifying their frontiers to their own advantage, the danger inherent in the proposed change may be formidable.

It appears to me that under these circumstances it will be wiser, until our experience of international arbitration is greater, for nations to retain in their own hands some control over the ultimate result of any claim that may be advanced against their territorial rights. I have suggested arrangements under which their interests might be indirectly protected, by conferring on the defeated litigants an appeal to a court in which the award would need confirmation by a majority of judges belonging to their nationality. I do not insist on this special form of protection. It would be equally satisfactory and more simple to provide that no award on a question of territorial right should stand if, within three months of its delivery, either party should formally protest against its validity. The moral presumption against any nation delivering such a protest would, in the opinion of the world, be so strong that no Government would resort to such a defence unless under a cogent apprehension that a miscarriage of justice was likely to take place.

Mr. Olney himself appears to admit the need of some security of the kind; only he would restrict the liberty of refusal to the period immediately preceding the arbitration. I do not in any degree underrate the value of his proposal, although, if it were adopted, it would require to be modified in its application to Great Britain in order to suit our special constitutional usages. But it would not meet the case of errors committed, from any cause, by the tribunal, which, in the case of a claim to inhabited territory, might have such serious results to large bodies of men.

I apprehend that if Mr. Olney's proposal were adopted as it stands, the fear of a possible miscarriage of justice would induce the Government whose territory was claimed to avoid all risk by refusing the arbitration altogether, under the plea, which he allows, that it involved their honour and integrity. The knowledge, on the other hand, that there still remained an escape from any decision that was manifestly unjust would make parties willing to go forward with the arbitration, who would shrink from it behind this plea, if they felt that, by entering on the proceeding, they had surrendered all possibility of self-protection, whatever injustice might be threatened by the award.

I have no doubt that if the procedure adopted were found in experience to work with tolerable fairness, the rejection of the award would come gradually to be looked upon as a proceeding so dangerous and so unreasonable, that the right of resorting to such a mode

of self-protection in territorial cases would become practically obsolete, and might in due time be formally renounced. But I do not believe that a hearty adoption and practice of the system of arbitration in the case of territorial demands can be looked for, unless the safety and practicability of this mode of settlement are first ascertained by a cautious and tentative advance.

I have to request that your Excellency will read the substance of this dispatch to Mr. Olney, and will leave a copy with him if he should wish it.

I am, etc.,

SALISBURY

13. ARBITRATION TREATY BETWEEN THE UNITED STATES AND GREAT BRITAIN OF JANUARY 11, 1897[1]

ARTICLE 1

The high contracting Parties agree to submit to arbitration in accordance with the provisions and subject to the limitations of this treaty all questions in difference between them which they may fail to adjust by diplomatic negotiation.

ARTICLE 2

'All pecuniary claims or groups of pecuniary claims which do not in the aggregate exceed £100,000 in amount, and which do not involve the determination of territorial claims, shall be dealt with and decided by an arbitral tribunal constituted as provided in the next following article.

In this article and in Article 4 the words ' groups of pecuniary claims ' mean pecuniary claims by one or more persons arising out of the same transactions or involving the same issues of law and of fact.

ARTICLE 3

Each of the high contracting Parties shall nominate one arbitrator who shall be a jurist of repute and the two arbitrators so nominated shall within two months of the date of their nomination select an umpire. In case they shall fail to do so within the limit of time above mentioned, the umpire shall be appointed by agreement between the members for the time being of the Supreme Court of the United States and the members for the time being of the Judicial Committee of the Privy Council in Great Britain, each nominating body acting by a majority. In case they shall fail to agree upon an umpire within three months of the date of an application made to them in that behalf by the high contracting Parties or either of them, the umpire shall be selected in the manner provided for in Article 10.

The person so selected shall be the president of the tribunal and the award of the majority of the members thereof shall be final.

ARTICLE 4

All pecuniary claims or groups of pecuniary claims which shall exceed £100,000 in amount and all other matters in difference, in respect of which either of the high con-

[1] The consent of the Senate of the United States to the ratification of this treaty was never given. See *Foreign Relations of the United States*, 1896, p. 238.

tracting Parties shall have rights against the other under treaty or otherwise, provided that such matters in difference do not involve the determination of territorial claims, shall be dealt with and decided by an arbitral tribunal, constituted as provided in the next following article.

ARTICLE 5

Any subject of arbitration described in Article 4 shall be submitted to the tribunal provided for by Article 3, the award of which tribunal, if unanimous, shall be final. If not unanimous either of the high contracting Parties may within six months from the date of the award demand a review thereof. In such case the matter in controversy shall be submitted to an arbitral tribunal consisting of five jurists of repute, no one of whom shall have been a member of the tribunal whose award is to be reviewed and who shall be selected as follows, viz.:—two by each of the high contracting Parties and one, to act as umpire, by the four thus nominated and to be chosen within three months after the date of their nomination. In case they shall fail to choose an umpire within the limit of time above mentioned, the umpire shall be appointed by agreement between the nominating bodies designated in Article 3 acting in the manner therein provided. In case they shall fail to agree upon an umpire within three months of the date of an application made to them in that behalf by the high contracting Parties or either of them, the umpire shall be selected in the manner provided for in Article 10.

The person so selected shall be the president of the tribunal and the award of the majority of the members thereof shall be final.

ARTICLE 6

Any controversy which shall involve the determination of territorial claims shall be submitted to a tribunal composed of six members, three of whom (subject to the provisions of Article 8), shall be judges of the Supreme Court of the United States or justices of the Circuit Courts to be nominated by the President of the United States, and the other three of whom (subject to the provisions of Article 8), shall be judges of the British Supreme Court of Judicature or Members of the Judicial Committee of the Privy Council to be nominated by Her Britannic Majesty, whose award by a majority of not less than five to one shall be final. In case of an award made by less than the prescribed majority, the award shall also be final unless either Power shall, within three months after the award has been reported, protest that the same is erroneous, in which case the award shall be of no validity.

In the event of an award made by less than the prescribed majority and protested as above provided, or if the members of the arbitral tribunal shall be equally divided, there shall be no recourse to hostile measures of any description until the mediation of one or more friendly Powers has been invited by one or both of the high contracting Parties.

ARTICLE 7

Objections to the jurisdiction of an arbitral tribunal constituted under this treaty shall not be taken except as provided in this article.

If before the close of the hearing upon a claim submitted to an arbitral tribunal constituted under Article 3 or Article 5 either of the high contracting Parties shall move such tribunal to decide, and thereupon it shall decide that the determination of such

claim necessarily involves the decision of a disputed question of principle of grave general importance affecting the national rights of such party as distinguished from the private rights whereof it is merely the international representative, the jurisdiction of such arbitral tribunal over such claim shall cease and the same shall be dealt with by arbitration under Article 6.

ARTICLE 8

In cases where the question involved is one which concerns a particular State or Territory of the United States, it shall be open to the President of the United States to appoint a judicial officer of such State or Territory to be one of the arbitrators under Article 3 or Article 5 or Article 6.

In like manner in cases where the question involved is one which concerns a British colony or possession, it shall be open to Her Britannic Majesty to appoint a judicial officer of such colony or possession to be one of the arbitrators under Article 3 or Article 5 or Article 6.

ARTICLE 9

Territorial claims in this treaty shall include all claims to territory and all claims involving questions of servitudes, rights of navigation and of access, fisheries and all rights and interests necessary to the control and enjoyment of the territory claimed by either of the high contracting Parties.

ARTICLE 10

If in any case the nominating bodies designated in Articles 3 and 5 shall fail to agree upon an umpire in accordance with the provisions of the said articles, the umpire shall be appointed by His Majesty the King of Sweden and Norway.

Either of the high contracting Parties, however, may at any time give notice to the other that, by reason of material changes in conditions as existing at the date of this treaty, it is of opinion that a substitute for His Majesty should be chosen either for all cases to arise under the treaty or for a particular specified case already arisen, and thereupon the high contracting Parties shall at once proceed to agree upon such substitute to act either in all cases to arise under the treaty or in the particular case specified as may be indicated by said notice; provided, however, that such notice shall have no effect upon an arbitration already begun by the constitution of an arbitral tribunal under Article 3.

The high contracting Parties shall also at once proceed to nominate a substitute for His Majesty in the event that His Majesty shall at any time notify them of his desire to be relieved from the functions graciously accepted by him under this treaty either for all cases to arise thereunder or for any particular specified case already arisen.

ARTICLE 11

In case of the death, absence or incapacity to serve of any arbitrator or umpire, or in the event of any arbitrator or umpire omitting or declining or ceasing to act as such, another arbitrator or umpire shall be forthwith appointed in his place and stead in the manner provided for with regard to the original appointment.

ARTICLE 12

Each Government shall pay its own agent and provide for the proper remuneration of the counsel employed by it and of the arbitrators appointed by it and for the expense of preparing and submitting its case to the arbitral tribunal. All other expenses connected with any arbitration shall be defrayed by the two Governments in equal moieties.

Provided, however, that, if in any case the essential matter of difference submitted to arbitration is the right of one of the high contracting Parties to receive disavowals of or apologies for acts or defaults of the other not resulting in substantial pecuniary injury, the arbitral tribunal finally disposing of the said matter shall direct whether any of the expenses of the successful party shall be borne by the unsuccessful party, and if so to what extent.

ARTICLE 13

The time and place of meeting of an arbitral tribunal and all arrangements for the hearing and all questions of procedure shall be decided by the tribunal itself.

Each arbitral tribunal shall keep a correct record of its proceedings and may appoint and employ all necessary officers and agents.

The decision of the tribunal shall, if possible, be made within three months from the close of the arguments on both sides.

It shall be made in writing and dated, and shall be signed by the arbitrators who may assent to it.

The decision shall be in duplicate, one copy whereof shall be delivered to each of the high contracting Parties through their respective agents.

ARTICLE 14

This treaty shall remain in force for five years from the date at which it shall come into operation, and further until the expiration of twelve months after either of the high contracting Parties shall have given notice to the other of its wish to terminate the same.

ARTICLE 15

The present treaty shall be duly ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof and by Her Britannic Majesty; and the mutual exchange of ratifications shall take place in Washington or in London within six months of the date hereof or earlier if possible.

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14. GENERAL AND PERMANENT ARBITRATION TREATY BETWEEN ITALY AND THE ARGENTINE REPUBLIC, SIGNED AT ROME, JULY 23, 1898[1]

ARTICLE 1

The high signatory Powers agree to submit to arbitral decision all controversies, whatever may be their nature and cause, which may arise between them during the existence of this treaty, and which could not be settled in a friendly manner by direct negotiation.

[1] This treaty appears not to have been ratified. For the original Italian text see Darby, *International Tribunals*, 4th edition, p. 406. For remarks on differences between the Italian and Spanish texts see *Archives diplomatiques*, vol. 69 (1899), p. 258.

It makes no difference if the controversies originated in facts prior to the provision of the present treaty.

ARTICLE 2

The high signatory Powers shall conclude a special convention for each case, in order to set forth the exact matter in dispute, the extent of the powers of the arbitrators, and any other matter with regard to procedure which shall be deemed proper.

In default of such convention, the tribunal shall specify, according to the reciprocal claims of the Parties, the points of law and fact which should be decided to close the controversy.

In all other regards, in default of a special convention, the following rules shall apply :

ARTICLE 3

The tribunal shall be composed of three judges. Each one of the signatory States shall designate one of them. The arbitrators thus chosen shall choose the third arbitrator.

If they cannot agree upon a choice, the third arbitrator shall be named by the head of a third State, who shall be called upon to make the selection. This State shall be designated by the arbitrators already named. If they cannot agree upon the nomination of a third arbitrator, request shall be made of the President of the Swiss Confederation and of the King of Sweden and Norway, alternately. The third arbitrator thus selected shall be *de jure* president of the tribunal.

The same persons can never be named successively as third arbitrator.

None of the arbitrators shall be a citizen of the signatory States, nor domiciled or resident within their territories. The arbitrators shall have no interest whatever in the questions forming the subject of the arbitration.

ARTICLE 4

When one arbitrator, for whatever reason, cannot take charge of the office to which he has been named, or if he cannot continue therein, his successor shall be appointed by the same procedure as was followed for his appointment.

ARTICLE 5

In default of special agreements between the Parties, the tribunal shall designate the time and place for its meetings outside the territories of the contracting States, choose the language to be used, determine the methods of examination, the formalities and periods which shall be prescribed for the Parties, the procedure to be followed, and, in general, make all decisions necessary for their operations, as well as settle all difficulties concerning procedure which may arise during the course of the argument.

The Parties agree, on their side, to place at the disposal of the arbitrators all means of information within their power.

ARTICLE 6

An agent of each Party shall be present at the sessions and represent his Government in all matters regarding arbitration.

ARTICLE 7

The tribunal has power to decide upon the regularity of its formation, the validity of the *compromis* and the interpretation thereof.

ARTICLE 8

The tribunal shall decide according to the principles of international law, unless the *compromis* applies special rules or authorizes the arbitrators to decide only in the rôle of *amiables compositeurs*.

ARTICLE 9

Unless there is a provision expressly to the contrary, all the deliberations of the tribunal shall be valid when they are secured by a majority vote of all of the arbitrators.

ARTICLE 10

The award shall decide finally each point in litigation. It shall be drawn up in duplicate original and signed by all the arbitrators. In case one of them refuses to sign, the others shall mention it and the award shall take effect when signed by the absolute majority of the arbitrators. Dissenting opinions shall not be inserted in the decision.

The award shall be notified to each Party through his representative before the tribunal.

ARTICLE 11

Each Party shall bear its own expenses and one-half of the general expenses of the arbitral tribunal.

ARTICLE 12

The award, legally rendered, decides the dispute between the Parties within the limits of its scope.

It shall contain an indication of the period within which it must be executed. The tribunal which rendered it shall decide questions which may arise concerning its execution.

ARTICLE 13

The decision cannot be appealed from, and its execution is entrusted to the honour of the nations signatory to this agreement.

However, a demand for revision will be allowed before the same tribunal which rendered the award and before it is executed :

1. If it has been based upon a false or erroneous document ;

2. If the decision was in whole or in part the result of an error of positive or negative fact which results from the acts or documents in the case.

ARTICLE 14

The present treaty shall run for a period of ten years from the exchange of ratifications. If it is not denounced six months before its expiration, it shall be considered renewed for another period of ten years, and so on in like manner.

ARTICLE 15

The present treaty shall be ratified and the ratifications exchanged at Buenos Aires within six months from this date.

15. ARTICLES 55 AND 58 OF THE GENERAL ACT OF BRUSSELS, JULY 2, 1890[1]

ARTICLE 55

The capturing officer and the authority which has conducted the inquiry shall each appoint a referee within forty-eight hours, and the two arbitrators shall have twenty-four hours to choose an umpire. The arbitrators shall, as far as possible, be chosen from among the diplomatic, consular, or judicial officers of the signatory Powers. Natives in the pay of the contracting Governments are formally excluded. The decision shall be by a majority of votes, and be considered as final.

If the court of arbitration is not constituted in the time indicated, the procedure in respect of the indemnity, as in that of damages, shall be in accordance with the provisions of Article 58, paragraph 2.

ARTICLE 56

The cases shall be brought with the least possible delay before the tribunal of the nation whose flag has been used by the accused. However, the consuls or any other authority of the same nation as the accused, specially commissioned to this end, may be authorized by their Government to pronounce judgment instead of the tribunal.

ARTICLE 58

Any decision of the national tribunal or authorities referred to in Article 56, declaring that the seized vessel did not carry on the slave trade, shall be immediately enforced, and the vessel shall be at perfect liberty to continue on its course.

In this case, the captain or owner of any vessel that has been seized without legitimate suspicion, or subjected to annoyance, shall have the right of claiming damages, the amount of which shall be fixed by agreement between the Governments directly interested, or by arbitration, and shall be paid within a period of six months from the date of the judgment acquitting the captured vessel.

16. ARTICLE 23 OF THE UNIVERSAL POSTAL CONVENTION, JULY 4, 1891[2]

ARTICLE 23

1. In case of disagreement between two or more members of the Union, as to the interpretation of the present Convention or as to the responsibility of an administration in case of the loss of a registered article, the question in dispute is decided by arbitration. To that end, each of the administrations concerned chooses another member of the Union not directly interested in the matter.

2. The decision of the arbitrators is given by an absolute majority of the votes.

3. In case the votes are equally divided, the arbitrators choose, in order to settle the difference, another administration equally disinterested in the disputed question.

4. The provisions of the present article apply equally to all the agreements concluded by virtue of Article 19, preceding (concerning letters and boxes with declared value, money-orders, postal parcels, collection of bills and drafts, books of identity, subscriptions to newspapers, etc.).

[1] Martens, *Nouveau recueil général de traités*, vol. 17, p. 345.

[2] *Ibid.*, p. 628.

17. CONCLUSIONS REACHED BY THE JUDICIARY CONGRESS OF MADRID IN 1892[1]

Upon the occasion of the four hundredth anniversary of the discovery of America, the Royal Academy of Laws of Madrid, invited to participate in the celebrations planned by the Spanish Government, conceived the idea of calling at Madrid an international judicial Congress, confined, however, to Spain, Portugal, and the Spanish-American republics. The Congress was of the utmost importance both because of the subjects treated and because of the large number of distinguished jurists who took part in it. One of the subjects considered was that of arbitration, upon which it reached the following conclusions :

1. Arbitration is, in the present state of international society, a fitting method for settling disputes among nations.

2. Its acceptance by Latin America, Spain, and Portugal would be most opportune at the present time.

3. For this purpose the States represented in the Congress should devise arbitration treaties, taking for a model that concluded between Spain and Ecuador, May 24, 1888, until further and much to be desired advances in public international law shall make possible the creation of a permanent tribunal intended to prevent or to settle controversies which may arise among the said States.

4. All international disputes without exception should be subject to the principle of arbitration.

5. All material sanction being of a nature to give rise to serious difficulties, there are no means of rendering arbitration decisions effective other than those which shall arise through a judicial organization of the Spanish-American States. But as the noble design of bringing about international organization, even among peoples having many points of contact, still meets with serious obstacles, it is important that this ideal, to which the whole world aspires, be made the subject of further doctrinal study and be inscribed upon the program of all future congresses, that it may not be lost sight of and that at any rate the principle of arbitration may be more and more generally accepted from this day forward.

18. OPINION OF MR. DESCAMPS[2]

An impulse strong and deep urges modern nations toward arbitration. This impulse is bound up with the progress of international relations, the development of democratic institutions, the economic transformation of societies, the softening of manners and customs, the spirit of the century,—with a number of factors that do not admit of its being considered a passing phenomenon in the life of nations.

It is an enlightened manifestation of the legal conscience of modern peoples.

It is the result of the upward course of law in the civilized world.

Notwithstanding the many shadows still existing, and in spite of many failures, victorious civilization pursues, both in space and in time, its progressive evolution.

[1] Calvo, *Le droit international*, vol. vi, p. 296.

[2] *Essai sur l'organisation de l'arbitrage international. Mémoire aux Puissances par le chevalier Descamps, sénateur de Belgique, président de l'Union interparlementaire*, p. 48.

Baron Edouard Descamps (1847–), international lawyer and statesman, Belgian delegate to the First Hague Peace Conference, member of the Permanent Court of Arbitration, and formerly Secretary-General of the Institute of International Law.

Geographically, we see it enlightening the globe by methods unknown to other ages and in a form eminently suited to ensure the permanence of its conquests. Political ties of various kinds to-day link together nearly all the populations scattered over the surface of the earth. And it seems as if we were approaching the time when in the great human family there will be no more disinherited races, because modern Powers in their expansion sincerely strive to combine with the quest of legitimate advantages the accomplishing of the mission of civilization which is incumbent on the greater peoples toward the lesser scions of humanity. See the progress : in the last century the European nations divided a portion of the west coast of Africa in order to carry on their slave trade more amicably. To-day, while partitioning Africa to its very depths, they consider as among their most sacred duties, first, the abolition of this trade, and, secondly, respect for the rights of humanity in the person of the slave—a duty that has become an international obligation.

From the historic point of view as from the geographic, the enlightening influence of civilization, as well as the reign of law which is its salient characteristic—as the reign of brute force is the salient characteristic of barbarism,—is no less striking in international relations. For a long time the relations between States were considered reducible to a series of interests arbitrarily determined by Governments and upheld by force and cunning. But, little by little, law has freed itself from these deadly clutches. It has asserted itself : it has passed, as Jellinek says, from a state of theoretical necessity to a state of effective power in international life. The old maxim that law reigns within empires and does not extend beyond has been finally repudiated by the society of civilized nations. This society brings face to face States who to a full consciousness of their national individuality add the recognition of legal principles and rules raised to the height of a common law, that is, international law. It is no rare thing to see Powers, in formal meetings, expressly take cognizance of this universal public law and extend its application.

Under the shield of this law each State preserves its autonomy, in accordance with its innate and unchangeable inclination to live its own life, as it pleases, on its own land, through the activity of its people, by its own resources, with a view to increasing its moral and material well-being and to ensuring in all things its legitimate prosperity. But at the same time it recognizes that it is on the same legal footing as the other States in the international community and is bound, therefore, to reconcile its power of expansion with the equal right of other States to self-preservation and self-development. Moreover, in the fruitful exchange of services that the international community entails and in the manifold benefits that it procures, each State finds both an increase in well-being in excess of the reasonable restraint imposed on its unlimited power of expansion, and a means of assistance necessary to its individual development : for, as Mr. Martens has said, ' in the present century, there is not a single civilized nation which can find all the elements of its life and its development within the borders of its own territory '.

Such is the legal community of civilized nations. Law there reveals itself as the regulating principle universally accepted, although it is not always observed,—a thing that occurs in private life as well. The diversity among nations appears to exist not that they may enslave each other, or destroy each other, but that they may unite to form an association beneficial to all, in which respect for each member of the great family of States is in harmony with the common good of all.

If law is the rule of international life thus understood, peace is the normal condition

of this life. It is in time of peace that States become more closely associated ; it is under the auspices of peace that the benefits of the society of nations are bestowed upon them ; so that if one cannot say that peace is always a State's most precious possession—justice, honour, national defence may take precedence,—it is at least true to assert that peace is, generally speaking, the blessing *par excellence* through which come all the other blessings in the lives of nations.

When disputes arise in an international community established on this basis, it is not surprising that arbitration, as a solution at once lawful and pacific, should present itself as the best means of settling them in a manner consistent with the right of each and with the good of all. The further law progresses and penetrates the society of nations, the more does arbitration appear to us as part of the structure of this society.

It has the promise of the future, in that statesmen like Lord Salisbury are not afraid to say that international wars are bound to disappear before the arbitration courts of a more advanced civilization, while other statesmen like Mr. Gladstone have openly advocated the creation of a ' Central European Tribunal '.

It has all the sympathy of the present. The burdensome and precarious character of the armed truce in which we live, the hideous prospects evoked by the thought of future battles, the deep influence which wars affecting only a few of the nations have to-day upon the relations of all ; finally, the conviction, confirmed by experience, that these games of chance and force, far from solving questions, more often give rise to new difficulties and breed fresh strife, each day turns men's minds further toward a method of settling international disputes more in accord with reason, justice, humanity, Christian sentiments and the well-being of society.

Arbitration is entering more and more into international customs ; it is multiplying the classes of disputes exempt from settlement by force ; and, as we have said, it is creating in certain regions in which nations are extending their operations, a stable peace founded upon treaty.

During the present century this institution has been tested, and experience has shown that in most cases nothing is more practical and at the same time nothing is more in harmony with the dignity and the legitimate interests of States.

To-day arbitration speaks through public opinion and through the press, and is admitted into parliaments and chancellories. Statesmen are interested in the subject and show regarding it a confidence which, while still somewhat limited, is increasing every day. Governments, freed from the ancient and false principle of the unlimited sovereignty of States—a principle which implies the negation of all international association and of all law, realize that a wise limitation of their sovereignty is its best safeguard. Little by little they are becoming accustomed to the idea of accepting for themselves, in case of dispute, and in so far as compatible with their legitimate independence, the salutary processes of justice that they impose on those whom they govern.

On all sides opportunities for the practice of arbitration are increasing : has the moment not come to attempt something in the line of its organization ? Until to-day arbitration has been but a happy accident : aided by access to a regular, though voluntary, jurisdiction, it can become a custom.

The State which shall take the initiative in this advance will do a noble and a useful work. If it succeeds only partially, it will receive, we believe, the support of universal opinion, the gratitude of nations, and the approbation of history.

That there are obstacles to the realization of such a plan, no one can deny. But, in a cause which involves ' that which is most sacred : peace among men ', what we must try to extract from these obstacles is not discouragement, but a method for fighting and conquering them.

Neither can any one deny that time is a necessary factor in certain reforms. But that the will of enlightened Governments and good men, aided by the consent of nations, can hasten the hour of realization—this is a fact that we must not fail to recognize ; for it is proved by the history of the conquests of international law in the nineteenth century.

We do not sufficiently realize, or rather we too often forget, what may be accomplished by a spirit of firmness and decision working for a just cause and in a sympathetic environment. Proofs, however, are not wanting : whenever States have ventured some great thing in the line of general progress, it is seldom that they have not found the means, in the midst of almost hopeless conditions, ultimately to overcome the obstacles which in the beginning stood in the way of their high-minded enterprise. Plunging resolutely into the true current of human progress, they have felt themselves upheld, encouraged, and, as it were, borne along by a higher power. This power that has laboured with them is the force which Channing has declared superior to all the prejudice and oppression of the centuries ; which he saw increasing with each step forward that civilization takes, the advance of which predicted to him the destruction of all the institutions that dishonour humanity ; which finds a response in every conscience, even in the heart of him who practises injustice ; which can never fail, because it is, said Channing, leagued with the omnipotence of God : it is the force of truth, of justice, and of the consciousness of human and Christian brotherhood.

Relying on this force, civilized States have succeeded in endowing Africa with a constitution which from the standpoint of mediation and arbitration is superior to that of Europe. Having shown this breadth of view toward the civilization of a continent and this pity for a disinherited race, it is time, it would appear, for European nations to take pity on themselves. If they are to continue to hold the sceptre of civilization, is it not upon condition that in our political communities we give to works of life and of peace precedence over those of discord and of death ?

So long as one could say the independence of States is in opposition to the formation of an international college of arbitrators, resistance was justifiable. But it has been proved that there are courts of arbitration perfectly compatible with the preservation of national sovereignty : how oppose longer, then, the force of inertia, basing our opposition on a question of national autonomy ?

And how, on the other hand, uphold the contention that the present state of international society is not far enough advanced to admit of the formation of such a court ? Frail as still are in some respects the bonds which unite them, each day we see States co-operating for the realization of some progressive movement. We see them creating universal unions with permanent offices. We even see them meeting together to take steps toward ensuring a certain international order consistent with the peace and security of all the States. Justice is the greatest blessing of international society : how, then, can States be powerless to procure for themselves, in some degree at least, the easiest and surest means of securing this blessing peaceably ?

We do not deny, in our international order, the tutelary character of the balances of power and of interests, when combined with the wisdom and competence exhibited by

the Governments in securing good results from this state of equilibrium. But why not look further and higher than this rather unstable ground, to the evidence of history ? Why not seek to improve upon the present and to prepare for the future by strengthening those institutions which are qualified better to ensure respect for law ? Shall modern States be condemned indefinitely to a headlong race when the question of developing instruments of war comes up, and to marking time when it is a question of reinforcing the institutions of peace ? If the suppression of violent strife among nations seems to many good souls too remote an ideal, if it is not considered even prudently possible at the present time to curtail national armament, cannot the international world at least legitimately aspire to more accessible justice in a less precarious state of peace ? And does not the honour, as well as the interest of civilized nations, require that along with the armies and the fortresses that represent the necessities of forcible defence, there shall exist among nations permanent institutions also that represent peaceful methods of securing international justice ?

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We believe that we have proved that the institution of a court of arbitration is not only a *postulatum* of the general progress in the life of nations and in international law, but also a natural corollary of the extension of *compromis* clauses in treaties, of the multiplication of actual cases of arbitration, and of the increase in international disputes. We have endeavoured to show how the formation of a permanent college of arbitrators, in addition to obviating the difficulties and serious inconveniences presented by the constitution of occasional tribunals, would contribute to the improvement of positive international law and to the much needed solidification of the sentiment of international justice in the world. We have said that this institution is no unprecedented innovation in international law and that it is in no way incompatible with the independence of States. And we have attempted to show that it is to the interest of the Great Powers as well as of the smaller States to establish a permanent international court of optional recourse and with definite pacific sanctions.

We respectfully submit these points of view to the kind attention of the Powers.

We are aware of the deep solicitude of sovereigns and heads of States for all that concerns the welfare of the peoples entrusted to them and for the peaceful development of international relations. We know that voices of authority are raised in Government councils in favour of improvements to be introduced into arbitral practice. Nearly all the parliaments of the world have given important pledges to this great cause. The question is to accomplish a work which all nations desire and need, it would seem, to an equal degree. We have the steadfast hope that what can be done in the way of the extension and organization of arbitration will be effectively realized.

We know very well that a court of arbitration is not the solution for all existing difficulties, but this institution is an important factor in the problem, which may be stated thus : to facilitate recourse to law and to discourage recourse to force. Such an aim would appear to be justification enough.

We understand clearly also that an optional recourse to a court will only partially assure the legal status of nations. But we consider that it is something to provide States with an ever-open door to prompt and sure justice.

When the Middle Ages, finding it impossible to abolish private wars, instituted the Truce of God, they fulfilled, under particularly difficult conditions, the duty which devolved upon them. May modern States be inspired by this recollection and may they in their turn fulfil their duty in accordance with the pacific legal tendencies of the present day.

We entreat all those who have power and influence to unite for the accomplishment of so noble and so far-reaching a work.

When the question first came up of introducing the arbitration clause into Belgian treaties, the august founder of the Belgian dynasty, when sounded upon this subject, gave his adhesion to the proposed innovation, adding this simple and significant comment : ' It is a question of justice and humanity.' This sentence, spoken by a prince whose reputation for wisdom extended all over Europe, has often recurred to the author while writing this essay. It is in the name of justice and humanity indeed, in the name of the *rapprochement* of nations in peace through law, that he spoke as the mouthpiece of the many members of the fourteen European parliaments represented at the Conference of Brussels.

Whatever happens, he will not regret having written these pages ; for he has fulfilled a duty. And when so many clever inventors are devoting their time to this problem, ' How to kill the greatest possible number of men in the least possible time ', he is happy to have devoted a few evenings to this question, ' How to settle international disputes—at any rate, in most cases,—in the least possible time, with the least possible effort, and in a manner worthy of reasonable beings created for mutual respect and assistance, and not for mutual destruction '.

There will always be enough elements of discord and enough makers of war in the world ; there will never be enough attempts at unity or enough workers for peace.

May this memorandum help to hasten the time when this great advance shall be realized : a voluntary international court, *a free tribunal in the heart of independent States.*

APPENDIX

AGREEMENT EFFECTED BY EXCHANGE OF NOTES CONCERNING NAVAL FORCE ON THE GREAT LAKES[1]

WASHINGTON, *April* 28, 1817.

The Undersigned, His Britannick Majesty's Envoy Extraordinary and Minister Plenipotentiary, has the honour to acquaint Mr. Rush, that having laid before His Majesty's Government the correspondence which passed last year between the Secretary of the Department of State and the Undersigned upon the subject of a proposal to reduce the Naval Force of the respective Countries upon the American Lakes, he has received the commands of His Royal Highness The Prince Regent to acquaint the Government of the United States, that His Royal Highness is willing to accede to the proposition made to the Undersigned by the Secretary of the Department of State in his note of the 2d of August last.

His Royal Highness, acting in the name and on the behalf of His Majesty, agrees, that the Naval Force to be maintained upon the American Lakes by His Majesty and the Government of the United States shall henceforth be confined to the following Vessels on each side—that is

On Lake Ontario to one Vessel not exceeding one hundred Tons burthen and armed with one eighteen pound cannon.

On the Upper Lakes to two Vessels not exceeding like burthen each and armed with like force.

On the waters of Lake Champlain to one Vessel not exceeding like burthen and armed with like force.

And His Royal Highness agrees, that all other armed Vessels on these Lakes shall be forthwith dismantled, and that no other Vessels of War shall be there built or armed.

His Royal Highness further agrees, that if either Party should hereafter be desirous of annulling this Stipulation, and should give notice to that effect to the other Party, it shall cease to be binding after the expiration of six months from the date of such notice.

The Undersigned has it in command from His Royal Highness the Prince Regent to acquaint the American Government, that His Royal Highness has issued orders to His Majesty's Officers on the Lakes directing, that the Naval Force so to be limited shall be restricted to such services as will in no respect interfere with the proper duties of the armed vessels of the other Party.

The Undersigned has the honour to renew to Mr. Rush the assurances of his Highest consideration.

CHARLES BAGOT

[1] Signed at Washington, April 28–29, 1817; ratification advised by the Senate, April 16, 1818; proclaimed by the President, April 28, 1818. Text reprinted from Malloy, *Treaties, Conventions, International Acts, Protocols, and Agreements between the United States of America and Other Powers, 1776–1909* (Washington, 1910), vol. i, p. 628.

DEPARTMENT OF STATE, *April* 29, 1817.

The Undersigned, acting Secretary of State, has the honor to acknowledge the receipt of Mr. Bagot's note of the 28th of this month, informing him that, having laid before the Government of His Britannick Majesty, the correspondence which passed last year between the Secretary of State and himself upon the subject of a proposal to reduce the naval force of the two countries upon the American Lakes, he had received the commands of His Royal Highness The Prince Regent to inform this Government that His Royal Highness was willing to accede to the proposition made by the Secretary of State in his note of the second of August last.

The Undersigned has the honor to express to Mr. Bagot the satisfaction which The President feels at His Royal Highness The Prince Regent's having acceded to the proposition of this Government as contained in the note alluded to. And in further answer to Mr. Bagot's note, the Undersigned, by direction of the President, has the honor to state, that this Government, cherishing the same sentiments expressed in the note of the second of August, agrees, that the naval force to be maintained upon the Lakes by the United States and Great Britain shall, henceforth, be confined to the following vessels on each side, that is :

On Lake Ontario to one vessel not exceeding One Hundred Tons burden, and armed with one eighteen-pound cannon. On the Upper Lakes to two vessels not exceeding the like burden each, and armed with like force, and on the waters of Lake Champlain to one vessel not exceeding like burden and armed with like force.

And it agrees, that all other armed vessels on these Lakes shall be forthwith dismantled, and that no other vessels of war shall be there built or armed. And it further agrees, that if either party should hereafter be desirous of annulling this stipulation and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice.

The Undersigned is also directed by The President to state, that proper orders will be forthwith issued by this Government to restrict the naval force thus limited to such services as will in no respect interfere with the proper duties of the armed vessels of the other party.

The Undersigned eagerly avails himself of this opportunity to tender to Mr. Bagot the assurances of his distinguished consideration and respect.

RICHARD RUSH

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
A PROCLAMATION

Whereas, an arrangement was entered into at the city of Washington, in the month of April, in the year of our Lord one thousand eight hundred and seventeen, between Richard Rush, esquire, at that time acting as Secretary for the Department of State of the United States, for and in behalf of the government of the United States, and the Right Honorable Charles Bagot, His Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, for and in behalf of His Britannic Majesty, which arrangement is in the words following, to wit :

The naval force to be maintained upon the American lakes by His Majesty and the Government of the United States shall henceforth be confined to the following vessels on each side, that is—

On Lake Ontario, to one vessel not exceeding one hundred tons burden, and armed with one eighteen-pound cannon.

On the Upper lakes, to two vessels not exceeding like burden each, and armed with like force.

On the waters of Lake Champlain, to one vessel not exceeding like burden, and armed with like force.

All other armed vessels on these lakes shall be forthwith dismantled, and no other vessels of war shall be there built or armed.

If either party should be hereafter desirous of annulling this stipulation, and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice.

The naval force so to be limited shall be restricted to such services as will, in no respect, interfere with the proper duties of the armed vessels of the other party.

And whereas the Senate of the United States have approved of the said arrangement, and recommended that it should be carried into effect, the same having also received the sanction of His Royal Highness the Prince Regent, acting in the name and on the behalf of His Britannic Majesty.

Now, therefore, I, James Monroe, President of the United States, do, by this my proclamation, make known and declare that the arrangement aforesaid, and every stipulation thereof, has been duly entered into, concluded and confirmed, and is of full force and effect.

Given under my hand, at the city of Washington, this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and eighteen, and of the independence of the United States the forty-second.

JAMES MONROE

By the President :
JOHN QUINCY ADAMS,
Secretary of State.

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